
STATE OF CONNECTICUT

SUPREME COURT

S.C. 19797

LYME LAND CONSERVATION TRUST, INC.

vs.

BEVERLY PLATNER

APPENDIX PART 1 TO THE BRIEF OF THE
DEFENDANT-APPELLANT, BEVERLY PLATNER
pp. A1 to A201

DEFENDANT-APPELLANT,
BEVERLY PLATNER

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FILED: OCTOBER 20, 2016

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Civil / Family Menu KNL-CV09-6001607-S LYME LAND CONSERVATION TRUST, INC. v. PLATNER, BEVERLY Et Al
E-File a New Case Prefix/Suffix: [none] Case Type: M50 File Date: 10/14/2009 Return Date: 11/10/2009
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Information updated as of: 03/15/2016

Case Information

Case Type: M50 - Misc - Declaratory Judgment
Court Location: New London JD
List Type: No List Type
Trial List Claim:
Last Action Date: 02/29/2016 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date: 03/26/2015
Disposition: JUDGMENT AFTER COMPLETED TRIAL TO THE COURT FOR THE PLAINTIFF(S)
Judge or Magistrate: HON JOSEPH KOLETSKY

Party & Appearance Information

Search
By Property Address

Party	No Fee Party	Category
P-01 LYME LAND CONSERVATION TRUST INC.		Plaintiff
Attorney: WALLER SMITH & PALMER PC (065975) File Date: 10/14/2009 52 EUGENE ONEILL DRIVE NEW LONDON, CT 06320		
Attorney: PHV PRITCHARD JOHN F 11/21/12 (434258) File Date: 11/21/2012 PILLSBURY WINTHROP ET AL 1540 BROADWAY NEW YORK, NY 10036		
P-02 STATE OF CONNECTICUT		Plaintiff - Intervening
Attorney: GEORGE C JEPSEN (432104) File Date: 01/30/2013 ATTORNEY GENERAL 55 ELM ST PO BOX 120 HARTFORD, CT 06141		
Attorney: GARY WILLIAM HAWES AAG (415091) File Date: 02/21/2013 AG-SPECIAL LIT 2ND FL 55 ELM ST PO BOX 120 HARTFORD, CT 06141		
Attorney: KAREN GANO (421633) File Date: 06/19/2014 AG-SPECIAL LIT 2ND FL 55 ELM ST PO BOX 120 HARTFORD, CT 06141		
D-50 BEVERLY PLATNER		Defendant
Attorney: SANTA MENDOZA (302784) ATTORNEY AT LAW		File Date: 11/12/2009

111 HUNTINGTON ST
NEW LONDON, CT 06320

Attorney: **e** JOHN R LAMBERT (101326)
25 TRUMBULL PLACE
NORTH HAVEN, CT 06473

File Date: 12/11/2009

Attorney: **e** JANET P BROOKS (301583)
1224 MILL STREET,
BUILDING B, STE. 212
EAST BERLIN, CT 06023

File Date: 06/28/2013

Attorney: **e** STEVEN MICHAEL KARLSON (413249)
3 ESSEX SQUARE
ESSEX, CT 06426

File Date: 07/14/2015

D-51 JOSEPH G STANDART
REMOVED








Defendant









D-52 CLINTON S STANDART
REMOVED








Defendant







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Motions / Pleadings / Documents / Case Status				
Entry No	File Date	Filed By	Description	Arguable
	12/11/2009	D	APPEARANCE Appearance	
	01/14/2010		CLAIM/RECLAIM Claim/Reclaim	
	01/22/2010	D	APPEARANCE Appearance	
	03/03/2010		CLAIM/RECLAIM Claim/Reclaim	
	04/23/2010		CLAIM/RECLAIM Claim/Reclaim	
	05/27/2010		CLAIM/RECLAIM Claim/Reclaim	
	11/09/2012		CLAIM/RECLAIM Claim/Reclaim	
	12/10/2012		APPEARANCE	
	02/21/2013	P	APPEARANCE Appearance	
	02/21/2013		CLAIM/RECLAIM Claim/Reclaim	
	06/28/2013	D	APPEARANCE Appearance	
	06/19/2014	P	APPEARANCE Appearance	
	10/01/2014		CLAIM/RECLAIM Claim/Reclaim	
	03/10/2015		APPEARANCE	
	07/14/2015	D	APPEARANCE	






Appearance				
100.30	10/14/2009	P	SUMMONS	No
100.31	10/14/2009	P	COMPLAINT	No
100.32	10/14/2009	P	RETURN OF SERVICE	No
101.00	12/11/2009	D	MOTION TO DISMISS Defendnat Beverly Platner's Motion to Dismiss RESULT: Denied 6/24/2010 HON EMMET COSGROVE	Yes
101.01	06/28/2010	C	ORDER  RESULT: Denied 6/28/2010 HON EMMET COSGROVE	No
101.50	06/24/2010	C	MEMORANDUM OF DECISION ON MOTION 	No
102.00	12/14/2009	D	MEMORANDUM IN SUPPORT OF MOTION Memo in Support of B. Platner's Motion to Dismiss	No
103.00	01/15/2010	P	AMENDED RETURN RE RICHARD BLUMENTHAL	No
104.00	01/15/2010	P	AMENDED RETURN RE LYME LAND CONSERVATION COMMISSION	No
105.00	01/20/2010	P	MEMORANDUM IN OPPOSITION TO MOTION to Defendant's Motion to Dismiss	No
106.00	01/22/2010	P	REQUEST TO AMEND COMPLAINT/AMENDMENT	No
107.00	01/25/2010	C	EXHIBITS	No
108.00	05/03/2010	C	LIST OF EXHIBITS	No
109.00	06/14/2010	D	MEMORANDUM IN SUPPORT OF MOTION Defendant's Supplemental Memorandum	No
110.00	08/23/2010	D	REQUEST TO REVISE Defendant's Request to Revise Amended Application	No
111.00	10/13/2010	P	REQUEST TO AMEND COMPLAINT/AMENDMENT RESULT: Order 6/9/2011 HON EMMET COSGROVE	No
111.10	06/09/2011	C	ORDER  RESULT: Granted 6/9/2011 HON EMMET COSGROVE	No
112.00	11/15/2010	D	OBJECTION TO REQUEST TO AMEND having failed to comply with request to revise RESULT: Overruled 6/9/2011 HON EMMET COSGROVE	No
112.10	06/09/2011	C	ORDER  RESULT: Overruled 6/9/2011 HON EMMET COSGROVE	No
113.00	11/24/2010	P	REQUEST FOR ARGUMENT	No
114.00	06/29/2011	D	MOTION TO REARGUE/RECONSIDER Motion to reargue 111.00 and 112.00 and memo in su RESULT: Denied 7/11/2011 HON EMMET COSGROVE	No
114.01	07/11/2011	C	ORDER  RESULT: Denied 7/11/2011 HON EMMET COSGROVE	No
115.00	07/07/2011	P	REQUEST FOR ARGUMENT (NON-ARG MATTER) of Motion #114.00	No
116.00	09/01/2011	P	MOTION FOR DEFAULT-FAILURE TO PLEAD RESULT: Granted 9/14/2011 BY THE CLERK	No
116.01	09/14/2011	C	ORDER  RESULT: Granted 9/14/2011 BY THE CLERK	No
117.00	10/06/2011	D	ANSWER AND SPECIAL DEFENSE of Beverly Platner	No
118.00	11/23/2011	P	REPLY TO SPECIAL DEFENSE	No
119.00	10/26/2012	P	MOTION TO CONSOLIDATE RESULT: Order 12/18/2012 HON JAMES DEVINE	No
119.01	12/18/2012	C	ORDER 	No









			RESULT: Order 12/18/2012 HON JAMES DEVINE	
120.00	10/30/2012	P	MOTION FOR PERMISSION TO APPEAR PRO HAC VICE PB 2-15 RESULT: Granted 11/16/2012 HON EMMET COSGROVE	No
120.50	11/16/2012	C	ORDER  RESULT: Granted 11/16/2012 HON EMMET COSGROVE	No
121.00	11/21/2012	D	OBJECTION TO MOTION Objection to Motion to Consolidate RESULT: Order 12/19/2012 HON JAMES DEVINE	No
121.01	12/19/2012	C	ORDER  RESULT: Order 12/19/2012 HON JAMES DEVINE	No
122.00	11/23/2012	D	NOTICE OF INTENTION TO ARGUE OR PRESENT TESTIMONY	No
123.00	01/15/2013	P	REQUEST TO AMEND COMPLAINT/AMENDMENT	No
124.00	01/30/2013	P	MOTION TO INTERVENE RESULT: Granted 5/30/2013 HON JAMES DEVINE	No
124.01	05/30/2013	C	ORDER  RESULT: Granted 5/30/2013 HON JAMES DEVINE	No
124.50	05/30/2013	C	MEMORANDUM OF DECISION ON MOTION 	No
125.00	01/30/2013	D	ENTRY ERASED TO CORRECT ERROR Last Updated: Result Information - 01/31/2013	No
126.00	02/19/2013	P	MOTION FOR DEFAULT-FAILURE TO PLEAD to Plaintiff's Second Amended Complaint RESULT: Denied 3/8/2013 BY THE CLERK	No
126.01	02/21/2013	C	RECORD CORRECTION Order entered in error. RESULT: Granted 2/21/2013 BY THE CLERK Last Updated: Result Information - 02/21/2013	No
126.02	03/08/2013	C	ORDER  RESULT: Denied 3/8/2013 BY THE CLERK	No
127.00	03/08/2013	D	REQUEST FOR ARGUMENT (NON-ARG MATTER)	No
128.00	03/08/2013	D	OBJECTION TO MOTION Objection to the Att'y General's Motion to Intervene RESULT: Overruled 5/30/2013 HON JAMES DEVINE	No
128.01	05/30/2013	C	ORDER  RESULT: Overruled 5/30/2013 HON JAMES DEVINE	No
129.00	03/11/2013	D	AMENDED ANSWER AND SPECIAL DEFENSE	No
130.00	03/14/2013	P	REPLY TO SPECIAL DEFENSE to Second Amended Complaint	No
131.00	03/19/2013	D	REQUEST FOR ARGUMENT (NON-ARG MATTER) Request for Argument re Defendant's Objection to Att'y Gen'l's Motion to Intervene RESULT: Granted 3/26/2013 HON PAUL VASINGTON	No
131.01	03/26/2013	C	ORDER  RESULT: Granted 3/26/2013 HON PAUL VASINGTON	No
132.00	05/30/2013	P	NOTICE Notice to Inspect	No
133.00	08/04/2013	P	DISCLOSURE OF EXPERT WITNESS Glenn Douglas Dreyer RESULT: Withdrawn 2/24/2014 BY THE CLERK Last Updated: Result Information - 02/24/2014	No
134.00	07/03/2013	D	SCHEDULING ORDER	No
134.01	07/09/2013	C	ORDER  RESULT: Granted 7/9/2013 HON JAMES DEVINE	No
135.00	07/17/2013	P	COMPLAINT BY INTERVENING PARTY	No
136.00	11/04/2013	D	ANSWER AND SPECIAL DEFENSE AND COUNTERCLAIM Answer, Special Defenses and Counterclaims vs Intervening Plaintiff,	No



George Jepsen, Atty' Gen'l				
137.00	11/18/2013	D	REQUEST Defrendnat's Request for leave to amend response to 2nd amended complanit	No
138.00	12/04/2013	P	MOTION FOR EXTENSION OF TIME RE DISCOVERY MOTION OR REQUEST PB CH13 RESULT: Granted 12/16/2013 BY THE CLERK	No
138.01	12/16/2013	C	ORDER  RESULT: Granted 12/16/2013 BY THE CLERK	No
139.00	12/24/2013	D	MOTION FOR DEFAULT-FAILURE TO PLEAD Motion for default against the plaintiff RESULT: Denied 1/2/2014 BY THE CLERK	No
139.01	01/02/2014	C	ORDER  RESULT: Denied 1/2/2014 BY THE CLERK	No
140.00	12/24/2013	D	MOTION FOR DEFAULT-FAILURE TO PLEAD Motion for default against plaintiff-intervenor RESULT: Granted 1/2/2014 BY THE CLERK	No
140.01	01/02/2014	C	ORDER  RESULT: Granted 1/2/2014 BY THE CLERK	No
141.00	12/26/2013	P	REPLY TO SPECIAL DEFENSE AND ANSWER TO COUNTERCLAIM and Special Defenses to Plaintiff's Counterclaim	No
142.00	01/06/2014	D	REQUEST TO REVISE Defendant's request to revise to the plaintiff, Lyme Land Conservation Trust, Inc.	No
143.00	01/07/2014	P	SPECIAL DEFENSE REVISED SPECIAL DEFENSES TO PLAINTIFF'S FIRST COUNTERCLAIM	No
144.00	01/08/2014	P	ANSWER AND SPECIAL DEFENSE TO COUNTERCLAIM OR CROSS COMPLAINT	No
145.00	01/08/2014	D	REPLY TO SPECIAL DEFENSE Defendant's reply to plaintiff's special defenses to counterclaim	No
146.00	01/10/2014	D	REPLY TO SPECIAL DEFENSE Defendant's reply to intervenor's special defenses to count one of the counterclaim	No
147.00	01/27/2014	P	OBJECTION RE DISCOVERY OR DISCLOSURE Plaintiff's Ojections to Defendants' Production Requests	No
148.00	02/20/2014	P	WITHDRAWAL OF MOTION Disclosure of Expert Witness Glenn Douglas Dreyer	No
149.00	03/19/2014	P	MOTION FOR CONTINUANCE OF PRETRIAL	No
149.01	03/20/2014	C	ORDER  RESULT: Granted 3/20/2014 HON EMMET COSGROVE	No
150.00	04/04/2014	P	DISCLOSURE OF EXPERT WITNESS Glenn Douglas Dreyer	No
151.00	06/09/2014	P	MOTION FOR CONTINUANCE RESULT: Granted 6/9/2014 HON EMMET COSGROVE	No
151.01	06/09/2014	C	ORDER  RESULT: Granted 6/9/2014 HON EMMET COSGROVE	No
152.00	06/16/2014	D	MOTION FOR ORDER Defendant's Motion to Compel Deposition Responses RESULT: Denied 10/16/2014 HON ROBERT LEUBA	No
152.01	06/30/2014	C	ORDER  RESULT: Order 6/30/2014 HON JAMES DEVINE	No
152.02	10/16/2014	C	ORDER  RESULT: Denied 10/16/2014 HON ROBERT LEUBA	No
153.00	06/16/2014	D	EXHIBITS	No

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154.00	06/16/2014	D	EXHIBITS Exhibit E to Defendant's Motion to Compel	No
155.00	06/26/2014	P	DISCLOSURE OF EXPERT WITNESS Amended Disclosure of Expert Witness - Glenn Douglas Dreyer	No
156.00	06/27/2014	P	NOTICE OF INTENTION TO ARGUE OR PRESENT TESTIMONY PB 11-18(a)(2) regarding Motion for Order (#152.00)	No
157.00	07/01/2014	D	DISCLOSURE OF EXPERT WITNESS First disclosure of expert witnesses by defendant/counterclaim plaintiff	No
158.00	07/02/2014	C	ORDER  RESULT: Order 7/2/2014 HON EMMET COSGROVE	No
159.00	07/07/2014	D	DISCLOSURE OF EXPERT WITNESS Second disclosure of expert witnesses	No
160.00	08/11/2014	P	OBJECTION TO MOTION Plaintiff's Objection to Defendant's Motion to Compel Answers to Deposition Questions RESULT: Sustained 10/16/2014 HON ROBERT LEUBA	No
160.01	10/16/2014	C	ORDER  RESULT: Sustained 10/16/2014 HON ROBERT LEUBA	No
161.00	10/14/2014	D	DISCLOSURE OF EXPERT WITNESS Third disclosure of expert witnesses	No
162.00	10/31/2014	P	DISCLOSURE OF EXPERT WITNESS Peter B. Cooper	No
163.00	01/12/2015	P	NOTICE OF SERVICE OF REQUEST FOR ADMISSION PB 13-22	No
164.00	01/23/2015	D	REQUEST Defendant's Notice of Filing First Set of Requests for Admission	No
165.00	02/08/2015	D	CASEFLOW REQUEST (JD-CV-116)	No
165.01	02/09/2015	C	ORDER  RESULT: Order 2/9/2015 HON EMMET COSGROVE	No
166.00	02/20/2015	P	MOTION FOR PERMISSION TO APPEAR PRO HAC VICE PB 2-16 regarding Timothy M. Russo RESULT: Granted 3/3/2015 HON JOSEPH KOLETSKY	No
166.01	03/03/2015	C	ORDER  RESULT: Granted 3/3/2015 HON JOSEPH KOLETSKY	No
167.00	02/20/2015	P	OBJECTION TO REQUEST PLAINTIFF'S OBJECTION TO DEFENDANT'S FIRST SET OF REQUESTS FOR ADMISSION	No
168.00	02/25/2015	P	MOTION IN LIMINE TO PRECLUDE ATTORNEY MARK K. BRANSE FROM OFFERING AT TRIAL TESTIMONY ON HIS OPINIONS RESULT: Denied 3/4/2015 HON JOSEPH KOLETSKY	No
168.01	03/04/2015	C	ORDER  RESULT: Denied 3/4/2015 HON JOSEPH KOLETSKY	No
169.00	02/26/2015	P	TRIAL MANAGEMENT REPORT Joint Court Trial Management Order	No
170.00	02/26/2015	D	OBJECTION Defendant's Objection to plaintiff's application to admit Timothy Russo, pro hac vice RESULT: Overruled 3/3/2015 HON JOSEPH KOLETSKY	No
170.01	03/03/2015	C	ORDER  RESULT: Overruled 3/3/2015 HON JOSEPH KOLETSKY	No
171.00	02/26/2015	D	MOTION IN LIMINE Defendant's Motion to Exclude Certain Documents	No
172.00	02/26/2015	D	EXHIBITS Exhibits to Defendant's Motion in Limine	No

173.00	02/26/2015	D	OBJECTION TO MOTION Defendant's Objection to Plaintiff's Motion to Preclude Mark K. Branse <i>RESULT</i> : Sustained 3/4/2015 HON JOSEPH KOLETSKY	No
173.01	03/04/2015	C	ORDER  <i>RESULT</i> : Sustained 3/4/2015 HON JOSEPH KOLETSKY	No
174.00	02/26/2015	D	EXHIBITS Exhibit to Defendant's Objection - Unreported Case	No
175.00	02/26/2015	D	MOTION IN LIMINE motion to conduct site visit	No
176.00	02/26/2015	D	MOTION IN LIMINE motion to bifurcate testimony of Katharine Throckmorton	No
177.00	02/26/2015	D	MOTION IN LIMINE motion to offer deposition testimony of Frederick Gahagan in lieu of live testimony	No
178.00	02/26/2015	D	EXHIBITS Exhibit A to 177 motion to offer deposition testimony of Frederick Gahagan	No
179.00	02/27/2015	D	MOTION FOR ORDER OF COMPLIANCE - PB SEC 13-14 (INTERR/PROD - 13-6/13-9)	No
180.00	02/27/2015	D	EXHIBITS Exhibit B to 179 motion for order of compliance	No
181.00	03/02/2015	D	BRIEF Defendant Beverly Platner's Trial Memorandum; Statements of Law & Legal Theories	No
182.00	03/02/2015	P	BRIEF Pretrial Brief of the Plaintiffs in Support of Plaintiffs' Claims against Defendant	No
183.00	03/02/2015	P	OBJECTION TO MOTION Plaintiff's Opposition to Defendant's Motion in Limine to Exclude Documentary Evidence	No
184.00	03/02/2015	P	REPLY Plaintiff's Response to Defendant's Opposition to Motion to Admit Counsel Pro Hac Vice	No
185.00	03/02/2015	P	OBJECTION TO MOTION Plaintiff's Objection to Defendant's Motion for Order of Compliance	No
186.00	03/03/2015	D	MOTION FOR ORDER OF COMPLIANCE - PB SEC 13-14 (INTERR/PROD - 13-6/13-9) supplemental motion for order of compliance	No
187.00	03/09/2015	P	MOTION FOR ORDER Plaintiff's Motion to Bifurcate Trial <i>RESULT</i> : Withdrawn 3/9/2015 HON JOSEPH KOLETSKY	No
187.01	03/09/2015	C	ORDER  <i>RESULT</i> : Withdrawn 3/9/2015 HON JOSEPH KOLETSKY	No
188.00	03/09/2015	P	WITHDRAWAL IN PART Withdrawal of Subparagraphs 13c & 13h of Count 1 of Plaintiff's Second Amended Complaint (#123.00)	No
189.00	03/10/2015	P	WITHDRAWAL OF MOTION Plaintiff's Motion to Bifurcate Trial	No
190.00	03/12/2015	P	MEMORANDUM POST TRIAL LEGAL MEMORANDUM OF ATTORNEY GENERAL	No
191.00	03/12/2015	P	MEMORANDUM Plaintiff, Lyme Land Conservation Trust, Inc.'s Claims of Law	No
192.00	03/12/2015	C	ORDER  <i>RESULT</i> : Order 3/12/2015 HON JOSEPH KOLETSKY	No
193.00	03/12/2015	D	BRIEF DEFENDANT'S BRIEF RE: CLAIMS OF LAW	No
194.00	03/12/2015	D	EXHIBITS EXHIBIT TO DEFENDANT'S BRIEF RE: CLAIMS OF LAW	No

195.00	03/12/2015	D	EXHIBITS EXHIBIT TO DEFENDANT'S BRIEF RE: CLAIMS OF LAW	No
196.00	03/12/2015	D	EXHIBITS EXHIBIT TO DEFENDANT'S BRIEF RE: CLAIMS OF LAW	No
197.00	03/12/2015	D	EXHIBITS EXHIBIT TO DEFENDANT'S BRIEF RE: CLAIMS OF LAW	No
198.00	03/12/2015	D	EXHIBITS EXHIBIT TO DEFENDANT'S BRIEF RE: CLAIMS OF LAW	No
199.00	03/13/2015	D	EXHIBITS EXHIBIT TO DEFENDANT'S BRIEF RE: CLAIMS OF LAW	No
200.00	03/20/2015	P	AFFIDAVIT RE: ATTORNEY/COUNSEL FEES	No
201.00	03/24/2015	D	OBJECTION DEFENDANT'S OBJECTION TO ATTORNEY'S FEES CLAIM	No
202.00	03/24/2015	D	EXHIBITS APPENDIX TO DEFENDANT'S OBJECTION TO ATTORNEY'S FEES	No
203.00	03/24/2015	D	EXHIBITS APPENDIX TO DEFENDANT'S OBJECTION TO ATTORNEY'S FEES PART TWO	No
204.00	03/24/2015	P	BILL OF COSTS RESULT: Order 3/26/2015 HON JOSEPH KOLETSKY	No
204.01	03/26/2015	C	ORDER  RESULT: Order 3/26/2015 HON JOSEPH KOLETSKY	No
205.00	03/24/2015	P	AFFIDAVIT RE: ATTORNEY/COUNSEL FEES of Pillsbury Winthrop Shaw Pittman, LLP	No
206.00	03/26/2015	C	ORDER  RESULT: Order 3/26/2015 HON JOSEPH KOLETSKY	No
206.01	03/26/2015	C	JUDGMENT AFTER COMPLETED TRIAL TO THE COURT FOR THE PLAINTIFF(S) RESULT: HON JOSEPH KOLETSKY	No
207.00	03/30/2015	C	LIST OF EXHIBITS (JD-CL-28/JD-CL-28a) Trial Exhibits	No
208.00	03/31/2015	D	MOTION TO REARGUE/RECONSIDER Defendant's Motion for Reargument pursuant to P.B. §11-11 re docket entry numbers 192.00 & 206.00 RESULT: Denied 4/14/2015 HON JOSEPH KOLETSKY	No
208.01	04/14/2015	C	ORDER  RESULT: Denied 4/14/2015 HON JOSEPH KOLETSKY	No
209.00	04/02/2015	P	OBJECTION TO MOTION Plaintiff's Objection to Defendant's Motion for Reargument re Order Nos. 192.00 & 206.00	No
210.00	04/15/2015	D	MOTION TO REARGUE/RECONSIDER Beverly Platner's Motion for Reargument Re Order Bearing Docket Entry No. 206.00 RESULT: Denied 7/16/2015 HON JOSEPH KOLETSKY	No
210.01	07/16/2015	C	ORDER  RESULT: Denied 7/16/2015 HON JOSEPH KOLETSKY	No
211.00	04/24/2015	P	OBJECTION TO MOTION Plaintiff's Objection to Defendant's Motion for Reargument Re Order No. 206.00 RESULT: Sustained 7/16/2015 HON JOSEPH KOLETSKY	No
211.01	07/16/2015	C	ORDER  RESULT: Sustained 7/16/2015 HON JOSEPH KOLETSKY	No
212.00	04/28/2015	D	APPEAL TO APPELLATE COURT	No
213.00	05/21/2015	D	MOTION FOR STAY Defendant's motion per CGS §52-477 for stay of order to restore (Entry # 192.00 & # 206.00) RESULT: Order 6/9/2015 HON JOSEPH KOLETSKY	No

213.01	06/03/2015	C	ORDER  RESULT: Order 6/3/2015 HON JOSEPH KOLETSKY	No
213.02	06/09/2015	C	ORDER  RESULT: Order 6/9/2015 HON JOSEPH KOLETSKY	No
214.00	06/03/2015	C	JUDGMENT FILE	No
215.00	05/08/2015	P	OBJECTION TO MOTION Lyme Land Conservation Trust Inc.'s Response to Defendant's Motion for Stay (Motion #213.00)	No
216.00	06/10/2015	D	MOTION FOR CLARIFICATION-COURT ORDER	No
217.00	06/16/2015	D	CASEFLOW REQUEST (JD-CV-116) RESULT: Order 6/25/2015 HON JOSEPH KOLETSKY	No
217.01	06/25/2015	C	ORDER  RESULT: Order 6/25/2015 HON JOSEPH KOLETSKY	No
218.00	06/18/2015	D	MOTION FOR CONTINUANCE	No
219.00	06/22/2015	P	OBJECTION TO MOTION Plaintiff's Objection to Defendant's Motion for Continuance	No
220.00	06/22/2015	D	MOTION FOR CONTINUANCE RESULT: Denied 6/25/2015 HON JOSEPH KOLETSKY	No
220.01	06/25/2015	C	ORDER  RESULT: Denied 6/25/2015 HON JOSEPH KOLETSKY	No
221.00	07/07/2015	P	MOTION FOR PERMISSION TO WITHDRAW APPEARANCE Motion to Withdraw Pro Hac Vice Appearance of Timothy Russo RESULT: Granted 7/9/2015 BY THE CLERK	Yes
221.01	07/09/2015	C	ORDER  RESULT: Granted 7/9/2015 BY THE CLERK	No
222.00	07/13/2015	P	BRIEF Plaintiff's Brief and Proposed Orders with Respect to the Issues to be heard on July 14, 2015	No
223.00	07/14/2015	D	DISCLOSURE OF EXPERT WITNESS Defendant's IDENTIFICATION OF EXPERT WITNESSES FOR POST-JUDGMENT RESTORATION HEARING	No
224.00	07/14/2015	D	MOTION FOR CONTINUANCE RESULT: Denied 7/14/2015 HON JOSEPH KOLETSKY	No
224.01	07/14/2015	C	ORDER  RESULT: Denied 7/14/2015 HON JOSEPH KOLETSKY	No
225.00	07/17/2015	C	ORDER  RESULT: Order 7/17/2015 HON JOSEPH KOLETSKY	No
226.00	07/21/2015	P	MOTION TO INSPECT Motion for Access pursuant to the Court's Order dated July 17, 2015 RESULT: Withdrawn 7/22/2015 BY THE CLERK	No
227.00	07/21/2015	P	APPEAL TO APPELLATE COURT Last Updated: Parly Type - 08/06/2015	No
228.00	07/22/2015	P	WITHDRAWAL OF MOTION	No
229.00	08/23/2015	C	APPELLATE COURT MATERIAL	No
230.00	07/29/2015	C	APPELLATE COURT MATERIAL second motion for review	No
231.00	08/06/2015	C	AMENDED APPEAL	No
232.00	08/06/2015	D	MOTION TO REARGUE/RECONSIDER Defendnat's P.B. 11-11 Motion to reargue Order -- Dicket Entry 225.00	No
232.01	11/09/2015	C	ORDER  RESULT: Denied 11/9/2015 HON JOSEPH KOLETSKY	No
233.00	08/07/2015	D	REPORT Defendant's submission of planting plan	No
234.00	08/07/2015	D	REPORT	No

Defendant's planting plan narrative				
235.00	08/07/2015	D	REPORT Defendant's Planting Plan	No
236.00	08/07/2015	P	REPORT Plaintiff's Planting Plan Submission	No
237.00	10/06/2015	D	CASEFLOW REQUEST (JD-CV-116)	No
238.00	11/09/2015	P	MOTION FOR COUNSEL FEES and Affidavit of Attorneys' Fees and Costs RESULT: Withdrawn 1/22/2016 BY THE CLERK	No
239.00	11/23/2015	C	ORDER  RESULT: Order 11/23/2015 HON JOSEPH KOLETSKY	No
240.00	11/24/2015	D	APPEAL TO APPELLATE COURT	No
241.00	03/26/2015	C	JUDGMENT FILE	No
242.00	01/22/2016	P	WITHDRAWAL OF MOTION (#238.00) Plaintiff's Application for Post-Judgment Attorney's Fees dated November 9, 2015	No
243.00	02/16/2016	D	STIPULATION Stipulation Regarding "Land Swap" [restricted driveway area for unrestricted area]	No
244.00	02/16/2016	D	MOTION FOR ORDER Joint Motion for Order in Accordance with Stipulation (re "Land Swap") RESULT: Granted 2/17/2016 HON JOSEPH KOLETSKY	No
244.01	02/17/2016	C	ORDER  RESULT: Granted 2/17/2016 HON JOSEPH KOLETSKY	No
245.00	02/17/2016	P	MOTION FOR COUNSEL FEES Plaintiff's Application for Post-Judgment Attorney's Fees	No
246.00	02/17/2016	P	BILL OF COSTS Plaintiff's Supplemental Bill of Costs	No

Scheduled Court Dates as of 03/14/2016				
KNL-CV09-6001607-S - LYME LAND CONSERVATION TRUST, INC. v. PLATNER, BEVERLY Et Al				
#	Date	Time	Event Description	Status
No Events Scheduled				

Judicial ADR events may be heard in a court that is different from the court where the case is filed. To check location information about an ADR event, select the Notices tab on the top of the case detail page.

Matters that appear on the Short Calendar and Family Support Magistrate Calendar are shown as scheduled court events on this page. The date displayed on this page is the date of the calendar.

All matters on a family support magistrate calendar are presumed ready to go forward.

The status of a Short Calendar matter is not displayed because it is determined by markings made by the parties as required by the calendar notices and the [civil](#) or [family](#) standing orders. Markings made electronically can be viewed by those who have electronic access through the Markings History link on the Civil/Family Menu in E-Services. Markings made by telephone can only be obtained through the clerk's office. If more than one motion is on a single short calendar, the calendar will be listed once on this page. You can see more information on matters appearing on Short Calendars and Family Support Magistrate Calendars by going to the [Civil/Family Case Look-Up](#) page and [Short Calendars By Juris Number](#) or [By Court Location](#).

Periodic changes to terminology that do not affect the status of the case may be made. This list does not constitute or replace official notice of scheduled court events.

Disclaimer: For civil and family cases statewide, case information can be seen on this website for a period of time, from one year to a maximum period of ten years, after the disposition date. If the Connecticut Practice Book Sections 7-10 and 7-11 give a shorter period of time, the case information

will be displayed for the shorter period. Under the Federal Violence Against Women Act of 2005, cases for relief from physical abuse, foreign protective orders, and motions that would be likely to publicly reveal the identity or location of a protected party may not be displayed and may be available only at the courts.

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NO. KNL-CV-09-6001607S

SUPERIOR COURT

LYME LAND CONSERVATION
TRUST, INC.

JUDICIAL DISTRICT OF

VS.

NEW LONDON AT NEW LONDON

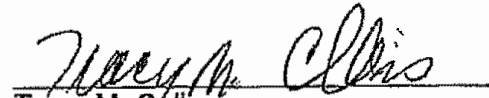
BEVERLY PLATNER

OCTOBER 13, 2010

PLAINTIFF'S REQUEST FOR LEAVE TO AMEND COMPLAINT

In accordance with Practice Book §10-60, the plaintiff requests leave to amend its Complaint to withdraw the Declaratory Judgment claim against the defendants Joseph G. Standart III, Clinton S. Standart and Beverly Platner and to add a count against Beverly Platner for violations of the Restrictive Covenant as per plaintiff's Amended Complaint annexed hereto.

THE PLAINTIFF,
Lyme Land Conservation Trust, Inc.



Tracy M. Collins
Waller, Smith & Palmer, P.C.
Its Attorneys

WALLER, SMITH &
PALMER, P.C.
Counselors at Law
52 Eugene O'Neill Drive
P.O. Box 88
New London, CT 06320
Tel. No. (860) 442-0367
Juris Number 65975


CERTIFICATION

This is to certify that on this 13th day of October, 2010 a copy of the foregoing
has been sent by first class, United States mail, postage prepaid to:

Santa Mendoza, Esquire
111 Huntington Street
New London, CT 06320

John R. Lambert, Esquire
25 Trumbull Place
North Haven, CT 06473

Cooper Whitney Cochran & Francois
51 Elm Street
P.O. Box 1898
New Haven, CT 06508


Tracy M. Collins

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PALMER, P.C.
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Juris Number 65975

NO. KNL-CV-09-6001607S

SUPERIOR COURT

LYME LAND CONSERVATION
TRUST, INC.

JUDICIAL DISTRICT OF

VS.

NEW LONDON AT NEW LONDON

BEVERLY PLATNER

OCTOBER 13, 2010

PLAINTIFF'S AMENDED COMPLAINT

1. The Lyme Land Conservation Trust, Inc. is a Connecticut non-stock corporation with a principal place of business in the Town of Lyme, County of New London, and State of Connecticut (the "Land Trust").

2. The Land Trust is a charitable organization qualified under Section 501(c)(3) of the Internal Revenue Code, whose purposes include the conservation of land and water areas.

3. The Land Trust has also been known in 1981 as the "Lyme Conservation Trust", at other times the "Lyme Land Trust", and the "Lyme Land Conservation Trust."

4. The Land Trust is the holder and owner of a Declaration of Restrictive Covenants conveyed to it in the name of the Lyme Conservation Trust on November 25, 1981 and recorded on December 21, 1981 in Volume 71, at Page 223 of the Lyme Land Records, a copy of which is attached hereto as Exhibit A. In 1981 and thereafter the plaintiff was often known as, and referred to as, the "Lyme Conservation Trust".

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5. The Declaration of Restrictive Covenants is a "conservation restriction" as defined by section 47-42a of the Connecticut General Statutes and is hereinafter referred to as the "Conservation Restriction".

6. The Conservation Restriction was conveyed by Paul B. Selden, the then owner of real property, a legal description of which is set forth as Exhibit A to the Conservation Restriction.

7. By virtue of the conveyance of the Conservation Restriction all subsequent owners of the property described in Exhibit A hold title subject to its terms, conditions, and restrictions.

8. The Defendant, Beverly Platner, is the current owner of 66 Selden Road, Lyme, Connecticut (the "Platner Property") by virtue of a Warranty Deed dated May 1, 2007 and recorded on May 3, 2007 in Volume 139, at Page 913 of the Lyme Land Records, a copy of which is attached hereto as Exhibit B.

9. The real property subject to the Conservation Restriction is identified as "AREA 'B' RESTRICTED AREA AREA = 12.6 Ac." and "AREA 'B' RESTRICTED AREA AREA = 4.3 Ac." on a plan entitled: "LAND OF PAUL SELDEN LYME, CT SCALE 1" = 100' DATE 5/22/81" Richard W. Gates, Land Surveyor, Main Street, Centerbrook, Conn., a copy of which is attached hereto as Exhibit C (the "Protected Areas").

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10. The Protected Areas consist of substantial portions of the Platner Property.

11. Section 3.6 of the Conservation Restriction gives the Land Trust the right to recover all court costs and reasonable attorneys' fees in the event that it brings an action to enforce or prevent an anticipatory breach of the Conservation Restriction and any relief is granted in its favor.

12. Upon information and belief, visual inspection and according to the defendant Beverly Platner's January 9, 2010 Application to the Conservation Commission and Inland Wetlands Agency for the Town of Lyme, she has violated and/or intends to violate the Conservation Restriction by engaging in the following activities in or upon the Protected Areas:

(a) Construction of a relocated driveway within a portion of the Protected Areas, which requires the destruction of vegetation, excavation and/or removal of materials, depositing of materials, and operation of vehicles in the Protected Areas, in violation of Sections 1.2, 1.3, 1.4 and 1.6 of the Conservation Restriction.

(b) Construction of "a fire department dry hookup" within the Protected Areas, which requires the excavation and/or removal of material, destruction of vegetation and operation of vehicles in the Protected Areas, in violation of Sections 1.1, 1.2, 1.3, 1.4 and 1.6 of the Conservation Restriction.

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(c) Change of the grade within the Protected Areas to the east and west of the driveway near its entrance to Selden Road, which requires the placing of materials and destruction of vegetation in Protected Areas, in violation of Section 1.3, 1.4 and 1.6 of the Conservation Restriction.

(d) Cutting and thinning the forest and/or the forest understory in that area identified as "Large Hardwood and Shrubs" on Exhibit D without the plaintiff's determination that such activity is necessary or appropriate to carry out beneficial and selective non-commercial forestry practices in violation of Section 1.7 of the Conservation Restriction.

(e) Destroying existing natural and native grasses and vegetation in the Protected Areas and replacing them with lawn and ornamental landscaping in violation of Section 1.4 of the Conservation Restriction.

(f) Constructing, maintaining and using improvements and structures such as irrigation pipes and watering systems in the Protected Areas in violation of the Conservation Restriction.

(g) Interfering with the plaintiff's right to inspect and document the condition and boundaries of the Protected Areas in violation of Section 3.1 of the Conservation Restriction.

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WHEREFORE, the Land Trust claims:

1. The following injunctive relief against the defendant Beverly Platner and her agents, servants and employees, pursuant to C.G.S. §47-42c, including a permanent injunction against the defendant Beverly Platner and her agents, servants and employees restraining them from taking any further action to implement any of the following in or upon the Protected Areas:

(a) the construction of a relocated driveway within the Protected Areas and associated improvements as set forth in paragraph 12a of this Complaint.

(b) the construction of a fire department dry hookup within the Protected Areas as set forth in paragraph 12b of this Complaint.

(c) changing the grade within the Protected Areas as set forth in paragraph 12d of this Complaint.

(d) cutting and thinning the forest understory in that area identified as "Large Hardwood and Shrubs" on Exhibit D without the plaintiff's determination that such activity is necessary or appropriate to carry out beneficial and selective non-commercial forestry practices as set forth in paragraph 12(e) of this Complaint.

(e) performing any of the activities described in paragraphs 12e - 12g of this Complaint.

2. A permanent injunction pursuant to C.G.S. §47-42c, requiring the defendant, Beverly Platner to do the following:

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(a) Relocate and restore the driveway and associated improvements as described in paragraph 12a of this Complaint to a predominantly natural, scenic or open condition or in agricultural or forestry use consistent with the stated purpose of the Conservation Restriction.

(b) Remove the "fire department dry hookup" as described in paragraph 12b of this Complaint from the Protected Areas and restore the area in accordance with the Conservation Restriction.

(c) Restore the grade as described in paragraph 12c of this Complaint to its pre-existing condition and restore the area in accordance with the Conservation Restriction.

(d) Restore the Platner Property to its condition prior to the defendants actions as described in paragraphs 12e – 12f of this Complaint.

3. An order directing the defendant, Beverly Platner, to permit the plaintiff: (i) to make annual inspections of the Protected Areas, (ii) intermittent inspections of the Protected Areas upon reasonable belief of the occurrence of activities prohibited by the Conservation Restriction, and (iii) to document the condition of the Protected Areas with photographs and other forms of visual media all free from unreasonable interference.

4. An order directing the defendant, Beverly Platner, her agents, servants and employees, to refrain from violating the Conservation Restriction in the future.

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New London, CT 06320
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Juris Number 65975

5. An order directing the defendant, Beverly Platner, to reimburse the Land Trust for all expenses and litigation costs it has incurred in bringing this action, including reasonable attorney's fees, pursuant to Section 3.6 of the Conservation Restriction.
6. An order that the Court exercise continuing jurisdiction over this case until the defendant, Beverly Platner, has fully complied with the terms of the judgment.
7. Such other orders and further relief as justice and equity require.

THE PLAINTIFF,
Lyme Land Conservation Trust, Inc.

By: Tracy M. Collins
Tracy M. Collins
Waller, Smith & Palmer, P.C.
Its Attorneys

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PALMER, P.C.
Counselors at Law
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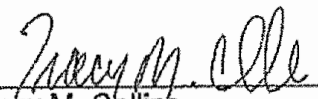
CERTIFICATION

This is to certify that on this 13th day of October, 2010 a copy of the foregoing
has been sent by first class, United States mail, postage prepaid to:

Santa Mendoza, Esquire
111 Huntington Street
New London, CT 06320

John R. Lambert, Esquire
25 Trumbull Place
North Haven, CT 06473

Cooper Whitney Cochran & Francois
51 Elm Street
P.O. Box 1898
New Haven, CT 06508



Tracy M. Collins

WALLER, SMITH &
PALMER, P.C.
Counselors at Law
52 Eugene O'Neill Drive
P.O. Box 88
New London, CT 06320
Tel. No. (860) 442-0367
Juris Number 65975

DECLARATION OF RESTRICTIVE COVENANTS

THIS IS A DECLARATION of restrictive covenants made by PAUL B. SELDEN, of New York, New York (hereinafter referred to as the "Grantor"), in favor of, and enforceable by, the LYME CONSERVATION TRUST, of Lyme, Connecticut (hereinafter referred to as the "Grantee"), in which the Grantor stipulates as follows:

A. The Grantor is the owner of a certain tract of real estate more particularly described in Exhibit "A" appended hereto;

B. The Grantor desires to impose certain conservation restrictions upon certain portions of said land, which portions are delineated and designated as "Area 'B' Restricted Area" upon a certain map entitled "Land of Paul Selden Lyme, Ct." dated May 22, 1961 and prepared by Richard H. Gates, Land Surveyor (which portions are hereinafter referred to as the "Protected Areas"), for the benefit of the Grantee and its successors and assigns; and

C. The Grantor further desires to grant to and confer upon the Grantee the power and right to enforce said restrictions.

NOW, THEREFORE, the Grantor, for himself and his heirs and assigns, hereby declares that the Protected Areas are, and shall be, held and conveyed by him upon and subject to the restrictions hereinafter set forth.

1. RESTRICTIONS

1.1. No building, sign, outdoor advertising display, mobile home, utility pole or other temporary or permanent structure will be constructed, placed or permitted to remain upon the Protected Areas.

1.2. No soil, loam, peat, sand, gravel, rock or other mineral substance, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, or other waste material will be placed, stored or permitted to remain thereon.

1.3. No soil, loam, peat, sand, gravel, rock, mineral substance or other earth product or material shall be excavated or removed therefrom.

1.4. No trees, grasses or other vegetation thereon shall be cleared or otherwise destroyed.

TIGHE AND SENNING
71 MAIN STREET
NEWBY, CONNECTICUT
(203) 747-8144

6 pages
CERTIFIED TO BE A TRUE COPY
DATE 3/10/02 TIME 11:00 A.
ATTEST W. J. [Signature]
TOWN CLERK, LYME, CONN.

EXHIBIT A

1.5. No activities or uses shall be conducted thereon which are detrimental to drainage, flood control, water conservation, erosion control, soil conservation, fish and wildlife or habitat preservation.

1.6. No snowmobiles, dune buggies, motorcycles, all-terrain vehicles or other vehicles of any kind shall be operated thereon.

1.7. Except as may otherwise be necessary or appropriate, as determined by the Grantee, to carry out beneficial and selective non-commercial forestry practices, all woodland thereon shall be kept in a state of natural wilderness.

1.8. No hunting (as distinguished, in the opinion of the Grantee, from ecologically necessary or appropriate practices of animal population control) shall be carried on thereon.

1.9. No boat centers, docks or other such landings shall be located or used thereon.

II. RESERVATIONS

Anything in ARTICLE I above to the contrary notwithstanding, the Grantor reserves to himself and his heirs and assigns the following rights in and upon the Protected Areas:

2.1. To create and maintain views and sight lines from residential property of the Grantor by the selective cutting, pruning or trimming of vegetation, provided that such action shall not have a significant adverse impact upon the Protected Areas.

2.2. To conduct and engage in the cultivation and harvesting of crops, flowers and hay; the planting of trees and shrubs and the mowing of grass; the grazing of livestock; and the construction and maintenance of fences necessary in connection therewith.

2.3. The cultivation and harvesting of forest products in accordance with sound non-commercial forestry practices.

2.4. To maintain, repair, reconstruct and replace any utility poles and associated appurtenances thereto located upon the Protected Areas at the effective date hereof.

2.5. To continue the use of the Protected Areas for all purposes not inconsistent with the restrictions set forth in ARTICLE I above.

III. MISCELLANEOUS

3.1. The Grantee shall have, and is hereby granted, a right of access to the Protected Areas, upon reasonable notice to the Grantor, his heirs and assigns, for the purpose of inspecting the Protected Areas and determining compliance with the restrictions hereinbefore set forth.

3.2. The covenants herein set forth shall be real covenants which shall run with and shall burden the Protected Areas and all parts thereof in perpetuity.

TIGHE AND BERNING
71 MAIN STREET
KEENE, CONNECTICUT
03431-1010

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3.3. The purpose of these restrictive covenants is to assure retention of the premises predominantly in their natural, scenic or open condition and in agricultural, farming, forest and open space use and to assure competent, conscientious and effective preservation and management in such condition and use. Said restrictions are intended as "conservation restrictions" as that term is defined in Section 47-42a of the Connecticut General Statutes.

3.4. The Grantee is an exempt organization referred to in Section 501(c)(3) of the Internal Revenue Code and the restrictions herein imposed are intended to implement the public policy expressed in Section 22a-1 of the Connecticut General Statutes, and are for "public" and "charitable" purposes as those terms are used in Section 45-97 of the Connecticut General Statutes. The rights of the Grantee hereunder shall not be assignable by the Grantee except to an organization exempt from Federal Income Tax under Section 501(c)(3) of the Internal Revenue Code having substantially the same purposes to be promoted or carried out as the Grantee.

3.5. It is expressly agreed that a breach of this covenant in respect of any restriction herein set forth may be enforced by the Grantee by injunctive relief and that no action at law for damages or otherwise shall be considered an adequate remedy for any such breach. The failure of the Grantee, its successors and assigns, to exercise any remedial right shall not constitute a waiver of any default in the observance or performance thereof and shall not relieve or excuse any person from the obligation to observe and perform such covenant.

3.6. If any action, whether at law or in equity, shall be brought to enforce the covenant arising pursuant to this declaration or to prevent an anticipatory breach thereof, and if any relief is granted in favor of the plaintiff in said action, the defendant, or all defendants jointly and severally, shall be obliged to pay all court costs and the reasonable attorneys' fees of the plaintiff therein and judgment therefor may be entered in the same proceeding.

3.7. Each of the restrictions hereinbefore set forth shall be considered severable and, if any one or more of them shall be held unenforceable in whole or in part, the effect of such decision shall be limited to the particular restriction or restrictions held to be unenforceable and all other restrictions shall continue to be separately and fully binding and effective.

IV.
AMENDMENT

4.1. This declaration may be amended by the addition, deletion or modification of any of the restrictions or other provisions herein contained or otherwise by the Grantor and the Grantee, provided that any such amendment shall be embodied in a writing executed by both the Grantor and the Grantee and recorded in the Lyme Land Records.

HE AND SENING
21 MAIN STREET
NEW, CONNECTICUT
06457-7071

- 3 -

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Y.
EFFECTIVE DATE

5.1. The effective date of this declaration of restrictive covenants shall be the date upon which this writing is recorded in the Lyme Land Records.

IN WITNESS WHEREOF, PAUL B. SELDEN has hereunto set his hand and seal this 27 day of November, 1981.

Witnessed by:

Donnan Dyer
Buckley McPherson
Paul B. Selgen (L.S.)

STATE OF New York }
COUNTY OF New York } ss.

The foregoing instrument was acknowledged before me this 20th day of November, 1981, by PAUL G. SELDEN.

Notary Public
NOTARY PUBLIC, State of New York
Exp. 11-15-54
Qual. 1-14-54
Commission Expires March 31, 1952

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EXHIBIT "A"

A certain piece or parcel of land located on the southerly side of Selden Road in Lyme, Connecticut, and more particularly bounded and described as follows:

Beginning at a point in the northerly boundary of the premises herein described at a point marked by a merestone, and thence run the following courses and distances: (1) South 50° 39' 50" West, 410.33 feet to a point marked by an iron pipe; (2) South 50° 39' 50" West, 80 feet, more or less, to the waters of the Connecticut River; (3) southerly along the waters of the Connecticut River, 860 feet, more or less, to a point; (4) southeasterly, easterly and northeasterly along the waters of the Connecticut River and Selden Creek, 950 feet, more or less, to a point; (5) northerly and northwesterly along the waters of Selden Cove, 210 feet, more or less, to a bulkhead; (6) northeasterly along the waters of Selden Cove and said bulkhead, 154 feet, more or less, to a point; (7) northerly, northwesterly, northeasterly, southeasterly and easterly along the waters of Selden Cove, 806 feet, more or less, to a point; (8) North 12° 44' 46" West, along land now or formerly of Louise W. Russell, 46.44 feet to a point; (9) North 15° 23' 15" West, along said Russell land, 140.64 feet to a point; (10) North 11° 48' 22" West, along said Russell land, 30.39 feet to a point; (11) North 16° 34' 34" West, along said Russell land, 130.02 feet to a point; (12) South 58° 28' 28" West, 13.88 feet to a point; (13) South 49° 53' 45" West, 45.12 feet to a point; (14) South 52° 05' 01" West, 62.46 feet to a point; (15) South 53° 27' 11" West, 70.03 feet to a point marked by a merestone; (16) southwesterly in the arc of a curve to the left, having a radius of 25 feet, an arc distance of 26.20 feet to a point marked by a merestone; (17) westerly in the arc of a curve to the right, having a radius of 80 feet, an arc distance of 69.80 feet to a point marked by a merestone; (18) South 43° 04' 09" West, 44.91 feet to a point marked by a merestone; (19) westerly in the arc of a curve to the right, having a radius of 430 feet, an arc distance of 147.31 feet to a point marked by a merestone; (20) South 62° 41' 50" West, 201.24 feet to a point marked by a merestone; (21) westerly in the arc of a curve to the right, having a radius of 477.20 feet, an arc distance of 112.88 feet to a point marked by a merestone; (22) northwesterly in the arc of a curve to the right, having a radius of 190 feet, an arc distance of 82 feet to a point marked by a merestone; (23) South 69° 42' 50" West, 22.43 feet to the point and place of beginning.

Said premises are the same and all the same premises described in a certain Quit-Claim Deed from Richard L. Selden to Paul B. Selden dated July 24, 1981 and recorded in Volume 70 at Page 1083 of the Lyme Land Records.

IGUE AND DENNING
71 MAIN STREET
LYME, CONNECTICUT
10023 767-8188

VOL 71 PAGE 228

Said premises are shown on a certain map entitled "Land of Paul Seiden Lyme, Ct." dated May 22, 1981 and prepared by Richard W. Gates, Land Surveyor, which map is filed or to be filed in the office of the Lyme Town Clerk.

DECEMBER 21-81 AT 9:55 A.M.

AND RECORDED BY MRS. JOAN K. WYNN

ATTEST: TOWN CLERK.

TIGHE AND SEHNING

WARRANTY DEED

To all People to Whom these Presents shall Come, Greeting:

Know Ye, That, We, GERARD J. LAWRENCE and FLEUR HAHNE LAWRENCE, of Lyme, Connecticut, for the consideration of FOUR MILLION DOLLARS (\$4,000,000.00) received to our full satisfaction of BEVERLY PLATNER, of Guilford, Connecticut, do give, grant, bargain, sell and confirm unto the said Beverly Platner:

SEE SCHEDULE A ATTACHED HERETO AND MADE A PART HEREOF.

The Grantee assumes and agrees to pay all taxes hereinafter becoming due and payable.

To Have and to Hold the above granted and bargained premises, with the appurtenances thereof, unto the said Grantee, her heirs and assigns forever, to her and their own proper use and behoof.

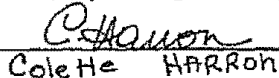
And Also, We the said Grantors do for ourselves, our heirs, executors and administrators, covenant with the said Grantee, her heirs and assigns, that at and until the enrolling of these presents, we are well seized of the premises, as a good indefeasible estate in FEE SIMPLE; and have good right to bargain and sell the same in manner and form as is above written, and that the same is free from all incumbrances whatsoever, except as hereinbefore mentioned.

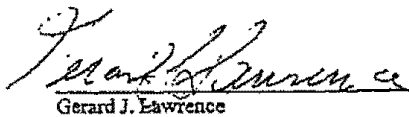
And Furthermore, We the said Grantors do by these presents bind ourselves and our heirs, executors and administrators forever to WARRANT AND DEFEND the above granted and bargained premises to her the said Grantee, her heirs and assigns, against all claims and demands whatsoever, except as hereinbefore mentioned.

In Witness Whereof, We have hereunto set our hands and seals this 1st day of May, 2007.

Signed, sealed and delivered
in the presence of


JAMES C. MCGUIRE


Cole H. HARRON


Gerard J. Lawrence


Fleur Hahne Lawrence

McGuire & McGuire
68 Federal Street
New London, CT 06320
860-413-4357

State \$86,000.00
Conveyance Tax Received


Town Clerk of Lyme

From \$10,000
Conveyance Tax Received


Town Clerk of Lyme

EXHIBIT B

VOL 139 PAGE 916

A 30' drainage easement as shown on a survey entitled, "Land of Paul Selden Lyne, CT" dated November 7, 1985, prepared by Richard W. Gates and filed in the office of the Town Clerk of Lyne in File #6, A-5.

Notes, facts, conditions and easements as shown on the above-referenced map.

Riparian rights of others in and to Selden Cove, Selden Creek, Connecticut River and any water which runs through or abuts said property.

The provisions of all governmental laws, ordinances, regulations and orders applicable to the premises or to the use thereof; real property taxes assessed in respect of the premises by the Town of Lyne on the List of October 1, 2006.

Reference may also be had to a plan entitled:

"Resubdivision Plan Lot 2 ALBERT W. SELDEN, ET AL Showing Proposed LOTS 2, 3, 4, 5 & 6 Selden Road - Lyne, Connecticut Date February 4, 1977, Scale 1" = 100'" revised to December 30, 1982, Angus L. McDonald & Associates, Inc. Engineers - Planners - Surveyors Old Saybrook, Connecticut.

Received May 3, 2007 2:15 PM
and recorded by me

Attest: [Signature] Town Clerk

SCHEDULE A

All that certain piece or parcel of land, with the buildings and improvements thereon, located on the southerly side of Selden Road in the Town of Lyme, County of New London and State of Connecticut, and shown on a certain map entitled "Land of Paul Selden Lyme, CT." dated November 7, 1985, and prepared by Richard W. Gates, land surveyor, which map is on file (File #6, A-5) in the office of the Lyme Town Clerk. Said Parcel of land being more particularly bounded and described as follows:

Beginning at a point in the northerly boundary of the premises herein described at a point marked by a merestone, and thence run the following courses and distances: (1) South 50 degrees 39' 50" West; 410.33 feet to a point marked by an iron pipe; (2) South 50 degrees 39' 50" West, 80 feet, more or less to the waters of the Connecticut River; (3) southerly along the waters of the Connecticut River, 860 feet, more or less, to a point; (4) southeasterly, easterly and northeasterly along the waters of the Connecticut River and Selden Creek, 950 feet, more or less, to a point; (5) northerly and northwesterly along the waters of Selden Cove, 210 feet, more or less to a point; (6) northwesterly along the waters of Selden Cove and a bulkhead, 154 feet, more or less, to a point (7) northerly, northwesterly and northerly along the waters of Selden Cove to the point where the northeasterly boundary line of 30' drainage easement shown on said map intersects the waters of Selden Cove; (8) northwesterly and northerly along the northeasterly boundary of said 30' drainage easement to a point in the southerly line of Selden Road as shown on said map; (9) south 62 degrees 41' 50" West, along the southerly line of Selden Road 30 feet to a point marked by a merestone; (10) westerly in the arc of a curve to the right, having a radius of 477.28 feet, an arc distance of 112.88 feet to a point marked by a merestone; (11) northwesterly in the arc of a curve to the right, having a radius of 190 feet, an arc distance of 53 feet more or less to a point; (12) northwesterly in the arc of a curve to the right, having a radius of 190 feet, an arc distance of 82 feet to a point; (13) northwesterly in the arc of a curve to the right, having a radius of 190 feet, an arc distance of 42 feet to a point marked by a merestone; (14) South 69 degrees 42' 50" West, 22.43 feet to the point and place of beginning.

Being the same premises described in a Warranty Deed from Richard H. Whitehead a/k/a Richard H. Whitehead, III and Rosa Girona-Whitehead a/k/a Rosa Girona Whitehead to Gerald J. Lawrence and Fleur Hahne Lawrence dated March 11, 1997, and recorded in Volume 103, Page 802 of the Lyme Land Records. Also being the same premises described in Quit Claim Deed from Gerard J. Lawrence to Fleur Hahne Lawrence dated March 14, 1997, and recorded in Volume 103, Page 806 of said Land Records; and in Quit Claim Deed from Fleur Hahne Lawrence to Gerard J. Lawrence and Fleur Hahne Lawrence dated January 9, 2003, and recorded in Volume 122, Page 236 of said Land Records.

Said premises are conveyed subject to:

A certain Declaration of Restrictive Covenants in favor of and enforceable by the Lyme Land Conservation Trust dated November 25, 1981, and recorded in Volume 71 at Page 223 of the Lyme Land Records.

The rights of others to use the paved driveway located on the premises herein and which driveway runs in a southeasterly direction to the dock, paved area and boat launching area fronting Selden Cove, as a means of ingress and egress to the aforesaid dock, paved area and boat launching area; and to the rights of others to use the aforesaid dock, paved area and boat launching area as of record appears; and together with all rights which the Grantors have to require others to contribute to the cost of maintenance of said areas. (Reference may be had to Volume 68, Pages 512 and 514; Volume 67, Page 560; Volume 68, Page 235 and Volume 68, Page 150; Volume 67, Page 72; Volume 66, Page 407; and Volume 66, Page 585.)

A pedestrian easement in favor of Anthony Enders as set forth in a deed dated December 21, 1992, and recorded on December 23, 1992, in Volume 93 at Page 853 of the Lyme Land Records.

Easement to the Connecticut Light & Power Company dated May 23, 1979, and recorded August 23, 1979, at Volume 69, Page 210 of the Lyme Land Records.

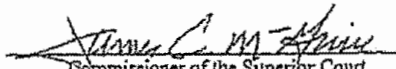
McGuire & McGuire
68 Federal Street
New London, CT 06320
800-443-4357

STATE OF CONNECTICUT:

ss. New London

COUNTY OF NEW LONDON:

The foregoing instrument was acknowledged before me this 1st day of May, 2007, by
GERARD J. LAWRENCE and FLEUR HAHNE LAWRENCE.


Commissioner of the Superior Court

Latest address of Grantees:
100 Trailwood Drive
Guilford, CT 06437

We E. McGuire
edford Street
ndon, CT 06320
1-443-0157

DOCKET NO: KNLCV096001607S

SUPERIOR COURT

ORDER 419136

LYME LAND CONSERVATI
V.
PLATNER, BEVERLY ET AL

JUDICIAL DISTRICT OF NORWICH/NEW
LONDON
AT NEW LONDON

6/9/2011

ORDER

ORDER REGARDING:
10/13/10 111.00 REQUEST TO AMEND COMPLAINT/AMENDMENT

Judicial Notice (JDNO) was sent regarding this order.

The foregoing, having been considered by the Court, is hereby:

ORDER: GRANTED

Per P.B. 1-8, although the plaintiff has failed to comply strictly with the requirements of the Practice Book, nonetheless the court finds the granting of this motion will advance justice and will not cause substantial prejudice or injustice to the defendant. The granting of the motion will allow the parties to move forward toward a resolution of their disputes on the merits.

419136

Judge: EMMET COSGROVE
Processed by: Gail Friswell

NO. KNL-CV-09-6001607-S

SUPERIOR COURT

LYME LAND CONSERVATION
TRUST, INC.

JUDICIAL DISTRICT OF

VS.

NEW LONDON AT NEW LONDON

BEVERLY PLATNER

JANUARY 15, 2013

PLAINTIFF'S SECOND AMENDED COMPLAINT

1. The Lyme Land Conservation Trust, Inc. is a Connecticut non-stock corporation with a principal place of business in the Town of Lyme, County of New London, and State of Connecticut (the "Land Trust").

2. The Land Trust is a charitable organization qualified under Section 501(c)(3) of the Internal Revenue Code, whose purposes include the conservation of land and water areas.

3. The Land Trust has also been known in 1981 as the "Lyme Conservation Trust", at other times the "Lyme Land Trust", and the "Lyme Land Conservation Trust."

4. The Land Trust is the holder and owner of a Declaration of Restrictive Covenants conveyed to it in the name of the Lyme Conservation Trust on November 25, 1981 and recorded on December 21, 1981 in Volume 71, at Page 223 of the Lyme Land Records, a copy of which is attached hereto as Exhibit A. In 1981 and thereafter the plaintiff was often known as, and referred to as, the "Lyme Conservation Trust".

5. The Declaration of Restrictive Covenants is a "conservation restriction" as defined by section 47-42a of the Connecticut General Statutes and is hereinafter referred to as the "Conservation Restriction".

WALLER, SMITH &
PALMER, P.C.
Counselors at Law
52 Eugene O'Neill Drive
P.O. Box 88
New London, CT 06320
Tel. No. (860) 442-0367
Juris Number 65975

6. The Conservation Restriction was conveyed by Paul B. Selden, the then owner of real property, a legal description of which is set forth as Exhibit A to the Conservation Restriction.

7. By virtue of the conveyance of the Conservation Restriction all subsequent owners of the property described in Exhibit A hold title subject to its terms, conditions, and restrictions.

8. The Defendant, Beverly Platner, is the current owner of 66 Selden Road, Lyme, Connecticut (the "Platner Property") by virtue of a Warranty Deed dated May 1, 2007 and recorded on May 3, 2007 in Volume 139, at Page 913 of the Lyme Land Records, a copy of which is attached hereto as Exhibit B.

9. The real property subject to the Conservation Restriction is identified as "AREA 'B' RESTRICTED AREA AREA = 12.6 Ac." and "AREA 'B' RESTRICTED AREA AREA = 4.3 Ac." on a plan entitled: "LAND OF PAUL SELDEN LYME, CT SCALE 1" = 100' DATE 5/22/81" Richard W. Gates, Land Surveyor, Main Street, Centerbrook, Conn., a copy of which is attached hereto as Exhibit C (the "Protected Areas").

10. The Protected Areas consist of substantial portions of the Platner Property.

11. Section 3.6 of the Conservation Restriction gives the Land Trust the right to recover all court costs and reasonable attorneys' fees in the event that it brings an action to enforce or prevent an anticipatory breach of the Conservation Restriction and any relief is granted in its favor.

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COUNT I

12. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 11 above.

13. Upon information and belief, visual inspection and according to the defendant Beverly Platner's January 9, 2010 Application to the Conservation Commission and Inland Wetlands Agency for the Town of Lyme, she has violated and/or intends to violate the Conservation Restriction by engaging in the following activities in or upon the Protected Areas:

(a) Construction of a relocated driveway within a portion of the Protected Areas, which requires the destruction of vegetation, excavation and/or removal of materials, depositing of materials, and operation of vehicles in the Protected Areas, in violation of Sections 1.2, 1.3, 1.4 and 1.6 of the Conservation Restriction.

(b) Construction of "a fire department dry hookup" within the Protected Areas, which requires the construction and placement of a permanent structure, excavation and/or removal of material, destruction of vegetation and operation of vehicles in the Protected Areas, in violation of Sections 1.1, 1.2, 1.3, 1.4 and 1.6 of the Conservation Restriction.

(c) Change of the grade within the Protected Areas to the east and west of the driveway near its entrance to Selden Road, which requires the placing of materials and destruction of vegetation in Protected Areas, in violation of Section 1.3, 1.4 and 1.6 of the Conservation Restriction.

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Juris Number 65975

(d) Cutting and thinning the forest and/or the forest understory in that area identified as "Large Hardwood and Shrubs" on Exhibit C without the plaintiff's determination that such activity is necessary or appropriate to carry out beneficial and selective non-commercial forestry practices in violation of Section 1.7 of the Conservation Restriction.

(e) Destroying existing natural and native grasses and vegetation in the Protected Areas and replacing them with lawn and ornamental landscaping in violation of Section 1.4 of the Conservation Restriction.

(f) Constructing, maintaining and using improvements and structures such as irrigation pipes and watering systems in the Protected Areas in violation of the Conservation Restriction.

(g) Dumping truck loads of dirt on the Protected Property in violation of Section 1.2 of the Conservation Restriction.

(h) Interfering with the plaintiff's right to inspect and document the condition and boundaries of the Protected Areas in violation of Section 3.1 of the Conservation Restriction.

COUNT II

14. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 13 above.

15. Defendant's violations of the Conservation Restriction as alleged in paragraph 12 above constitute willful violations of C.G.S. §52-560a. Such violations have encroached upon

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Juris Number 65975

and/or threaten to encroach upon the Protected Property within the meaning of the statute without the permission of Plaintiff and without other legal justification.

WHEREFORE, the Land Trust claims:

1. The following injunctive relief against the defendant Beverly Platner and her agents, servants and employees, pursuant to C.G.S. §47-42c, and/or C.G.S. §52-560a including a permanent injunction against the defendant Beverly Platner and her agents, servants and employees restraining them from taking any further action to implement any of the following in or upon the Protected Areas:

(a) the construction of a relocated driveway within the Protected Areas and associated improvements as set forth in paragraph 13(a) of this Complaint.

(b) the construction of a fire department dry hookup within the Protected Areas as set forth in paragraph 13(b) of this Complaint.

(c) changing the grade within the Protected Areas as set forth in paragraph 13(d) of this Complaint.

(d) cutting and thinning the forest understory in that area identified as "Large Hardwood and Shrubs" on Exhibit C without the plaintiff's determination that such activity is necessary or appropriate to carry out beneficial and selective non-commercial forestry practices as set forth in paragraph 13(e) of this Complaint.

(e) performing any of the activities described in paragraphs 13(e) – 13(h) of this Complaint.

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Juris Number 65975

2. A permanent injunction pursuant to C.G.S. §47-42c, requiring the defendant, Beverly Platner to do the following:

(a) Relocate and restore the driveway and associated improvements as described in paragraph 13(a) of this Complaint to a predominantly natural, scenic or open condition or in agricultural or forestry use consistent with the terms and stated purpose of the Conservation Restriction.

(b) Remove any "fire department dry hookup" as described in paragraph 13(b) of this Complaint from the Protected Areas and restore the area in accordance with the terms and Conservation Restriction.

(c) Restore the grade as described in paragraph 13(c) of this Complaint to its pre-existing condition and restore the area in accordance with the Conservation Restriction.

(d) Restore the Platner Property to its condition as it existed prior to the defendants actions as described in paragraphs 13(c) – 13(h) of this Complaint.

3. An order directing the defendant, Beverly Platner, to permit the plaintiff: (i) to make annual inspections of the Protected Areas, (ii) to make intermittent inspections of the Protected Areas upon reasonable belief of the occurrence of activities prohibited by the Conservation Restriction, and (iii) to document the condition of the Protected Areas with photographs and other forms of visual media all free from unreasonable interference.

4. An order directing the defendant, Beverly Platner, her agents, servants and employees, to refrain from violating the Conservation Restriction in the future.

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PALMER, P.C.
Counselors at Law
52 Eugene O'Neill Drive
P.O. Box 88
New London, CT 06320
Tel. No. (860) 442-0367
Juris Number 65975

5. An order directing the defendant, Beverly Platner, to reimburse the Land Trust for all expenses and litigation costs it has incurred in bringing this action, including reasonable attorney's fees, pursuant to Section 3.6 of the Conservation Restriction and pursuant to C.G.S. §52-560a(c).

6. An order awarding plaintiff damages pursuant to C.G.S. §52-570a(d) in an amount of up to five times the costs of restoration of The Protected Property to its condition as it existed prior to the defendant's actions as alleged in paragraph 13 of this Complaint.

7. An order that the Court exercise continuing jurisdiction over this case until the defendant, Beverly Platner, has fully complied with the terms of the judgment.

8. Such other orders and further relief as justice and equity require.

THE PLAINTIFF,
Lyme Land Conservation Trust, Inc.

By: 

Tracy M. Collins
Waller, Smith & Palmer, P.C.

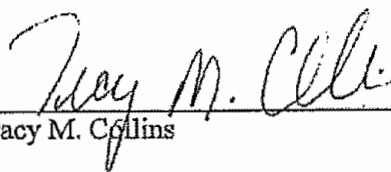
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PALMER, P.C.
Counselors at Law
52 Eugene O'Neill Drive
P.O. Box 88
New London, CT 06320
Tel. No. (860) 442-0367
Juris Number 65975

CERTIFICATION

This is to certify that on this ^{15th} day of January, 2013 a copy of the foregoing has been sent by first class, United States mail, postage prepaid to:

Santa Mendoza, Esquire
111 Huntington Street
New London, CT 06320

John R. Lambert, Esquire
25 Trumbull Place
North Haven, CT 06473


Tracy M. Collins

WALLER, SMITH &
PALMER, P.C.
Counselors at Law
52 Eugene O'Neill Drive
P.O. Box 88
New London, CT 06320
Tel. No. (860) 442-0367
Juris Number 63975

DECLARATION OF RESTRICTIVE COVENANTS

THIS IS A DECLARATION of restrictive covenants made by PAUL B. SELDEN, of New York, New York (hereinafter referred to as the "Grantor"), in favor of, and enforceable by, the LYME CONSERVATION TRUST, of Lyme, Connecticut (hereinafter referred to as the "Grantee"), in which the Grantor stipulates as follows:

A. The Grantor is the owner of a certain tract of real estate more particularly described in Exhibit "A" appended hereto;

B. The Grantor desires to impose certain conservation restrictions upon certain portions of said land, which portions are delineated and designated as "Area 'B' Restricted Area" upon a certain map entitled "Land of Paul Selden Lyme, Ct." dated May 22, 1981 and prepared by Richard W. Gates, Land Surveyor (which portions are hereinafter referred to as the "Protected Areas"), for the benefit of the Grantee and its successors and assigns; and

C. The Grantor further desires to grant to and confer upon the Grantee the power and right to enforce said restrictions.

NOW, THEREFORE, the Grantor, for himself and his heirs and assigns, hereby declares that the Protected Areas are, and shall be, held and conveyed by him upon and subject to the restrictions hereinafter set forth.

I.
RESTRICTIONS

1.1. No building, sign, outdoor advertising display, mobile home, utility pole or other temporary or permanent structure will be constructed, placed or permitted to remain upon the Protected Areas.

1.2. No soil, loam, peat, sand, gravel, rock or other mineral substance, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, or other waste material will be placed, stored or permitted to remain thereon.

1.3. No soil, loam, peat, sand, gravel, rock, mineral substance or other earth product or material shall be excavated or removed therefrom.

1.4. No trees, grasses or other vegetation thereon shall be cleared or otherwise destroyed.

TIGHE AND BERNING
71 MAIN STREET
EAST HARTFORD
CONNECTICUT 06108

6 pages
CERTIFIED TO BE A TRUE COPY
DATE 3/14/89 TIME 11:00 A.
ATTEST [Signature]
TOWN CLERK, LYME, CONN.

EXHIBIT A

1.5. No activities or uses shall be conducted thereon which are detrimental to drainage, flood control, water conservation, erosion control, soil conservation, fish and wildlife or habitat preservation.

1.6. No snowmobiles, dune buggies, motorcycles, all-terrain vehicles or other vehicles of any kind shall be operated thereon.

1.7. Except as may otherwise be necessary or appropriate, as determined by the Grantee, to carry out beneficial and selective non-commercial forestry practices, all woodland thereon shall be kept in a state of natural wilderness.

1.8. No hunting (as distinguished, in the opinion of the Grantee, from ecologically necessary or appropriate practices of animal population control) shall be carried on thereon.

1.9. No boat centers, docks or other such landings shall be located or used thereon.

II. RESERVATIONS

Anything in ARTICLE I above to the contrary notwithstanding, the Grantor reserves to himself and his heirs and assigns the following rights in and upon the Protected Areas:

2.1. To create and maintain views and sight lines from residential property of the Grantor by the selective cutting, pruning or trimming of vegetation, provided that such action shall not have a significant adverse impact upon the Protected Areas.

2.2. To conduct and engage in the cultivation and harvesting of crops, flowers and hay; the planting of trees and shrubs and the mowing of grass; the grazing of livestock; and the construction and maintenance of fences necessary in connection therewith.

2.3. The cultivation and harvesting of forest products in accordance with sound non-commercial forestry practices.

2.4. To maintain, repair, reconstruct and replace any utility poles and associated appurtenances thereto located upon the Protected Areas at the effective date hereof.

2.5. To continue the use of the Protected Areas for all purposes not inconsistent with the restrictions set forth in ARTICLE I above.

III. MISCELLANEOUS

3.1. The Grantee shall have, and is hereby granted, a right of access to the Protected Areas, upon reasonable notice to the Grantor, his heirs and assigns, for the purpose of inspecting the Protected Areas and determining compliance with the restrictions hereinbefore set forth.

3.2. The covenants herein set forth shall be real covenants which shall run with and shall burden the Protected Areas and all parts thereof in perpetuity.

TIGHE AND SENNING
71 MAIN STREET
DANBURY, CONNECTICUT
06810-7070

3.3. The purpose of these restrictive covenants is to assure retention of the premises predominantly in their natural, scenic or open condition and in agricultural, farming, forest and open space use and to assure competent, conscientious and effective preservation and management in such condition and use. Said restrictions are intended as "conservation restrictions" as that term is defined in Section 47-42a of the Connecticut General Statutes.

3.4. The Grantee is an exempt organization referred to in Section 501(c)(3) of the Internal Revenue Code and the restrictions herein imposed are intended to implement the public policy expressed in Section 22a-1 of the Connecticut General Statutes, and are for "public" and "charitable" purposes as those terms are used in Section 45-97 of the Connecticut General Statutes. The rights of the Grantee hereunder shall not be assignable by the Grantee except to an organization exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code having substantially the same purposes to be promoted or carried out as the Grantee.

3.5. It is expressly agreed that a breach of this covenant in respect of any restriction herein set forth may be enforced by the Grantee by injunctive relief and that no action at law for damages or otherwise shall be considered an adequate remedy for any such breach. The failure of the Grantee, its successors and assigns, to exercise any remedial right shall not constitute a waiver of any default in the observance or performance thereof and shall not relieve or excuse any person from the obligation to observe and perform such covenant.

3.6. If any action, whether at law or in equity, shall be brought to enforce the covenant arising pursuant to this declaration or to prevent an anticipatory breach thereof, and if any relief is granted in favor of the plaintiff in said action, the defendant, or all defendants jointly and severally, shall be obliged to pay all court costs and the reasonable attorneys' fees of the plaintiff therein and judgment therefor may be entered in the same proceeding.

3.7. Each of the restrictions hereinbefore set forth shall be considered severable and, if any one or more of them shall be held unenforceable in whole or in part, the effect of such decision shall be limited to the particular restriction or restrictions held to be unenforceable and all other restrictions shall continue to be separately and fully binding and effective.

IV. AMENDMENT

4.1. This declaration may be amended by the addition, deletion or modification of any of the restrictions or other provisions herein contained or otherwise by the Grantor and the Grantee, provided that any such amendment shall be embodied in a writing executed by both the Grantor and the Grantee and recorded in the Lyme Land Records.

HE AND SERNING
11 MAR 1987
WEL. AUTHENTICITY
(000) 7074100

- 3 -

VOL. 71 PAGE 126

v.
EFFECTIVE DATE

5.1. The effective date of this declaration of restrictive covenants shall be the date upon which this writing is recorded in the Lyme Land Records.

IN WITNESS WHEREOF, PAUL D. SELDEN has hereunto set his hand and seal this 25 day of November, 1981.

Witnessed by:

Orson Dyer
Bucky McPhallen (L.S.)
Paul D. Selden

STATE OF New York }
COUNTY OF New York } ss.

1981

The foregoing instrument was acknowledged before me this 20th day of November, 1981, by PAUL D. SELDEN.

[Signature]
Notary Public
JAMES HORN
NOTARY PUBLIC, New York
No. 21-050724
Qual. 1/15/79, N.Y. County
Comm. Expires March 31, 1982

VOL 71 PAGE 227

EXHIBIT "A"

A certain piece or parcel of land located on the southerly side of Selden Road in Lyme, Connecticut, and more particularly bounded and described as follows:

Beginning at a point in the northerly boundary of the premises herein described at a point marked by a merestone, and thence run the following courses and distances: (1) South 50° 39' 50" West, 410.33 feet to a point marked by an iron pipe; (2) South 50° 39' 50" West, 80 feet, more or less, to the waters of the Connecticut River; (3) southerly along the waters of the Connecticut River, 860 feet, more or less, to a point; (4) southeasterly, easterly and northeasterly along the waters of the Connecticut River and Selden Creek, 950 feet, more or less, to a point; (5) northerly and northwesterly along the waters of Selden Cove, 210 feet, more or less, to a bulkhead; (6) northeasterly along the waters of Selden Cove and said bulkhead, 154 feet, more or less, to a point; (7) northerly, northwesterly, northeasterly, southeasterly and easterly along the waters of Selden Cove, 806 feet, more or less, to a point; (8) North 12° 44' 46" West, along land now or formerly of Louise H. Russell, 46.44 feet to a point; (9) North 15° 23' 15" West, along said Russell land, 140.64 feet to a point; (10) North 11° 48' 22" West, along said Russell land, 30.39 feet to a point; (11) North 16° 34' 34" West, along said Russell land, 130.82 feet to a point; (12) South 50° 28' 28" West, 13.88 feet to a point; (13) South 49° 53' 45" West, 45.12 feet to a point; (14) South 52° 05' 01" West, 62.46 feet to a point; (15) South 53° 27' 11" West, 70.03 feet to a point marked by a merestone; (16) southwesterly in the arc of a curve to the left, having a radius of 25 feet, an arc distance of 26.20 feet to a point marked by a merestone; (17) westerly in the arc of a curve to the right, having a radius of 80 feet, an arc distance of 69.80 feet to a point marked by a merestone; (18) South 43° 04' 09" West, 44.91 feet to a point marked by a merestone; (19) westerly in the arc of a curve to the right, having a radius of 430 feet, an arc distance of 147.31 feet to a point marked by a merestone; (20) South 62° 41' 50" West, 201.24 feet to a point marked by a merestone; (21) westerly in the arc of a curve to the right, having a radius of 477.28 feet, an arc distance of 112.38 feet to a point marked by a merestone; (22) northwesterly in the arc of a curve to the right, having a radius of 190 feet, an arc distance of 82 feet to a point marked by a merestone; (23) South 69° 42' 50" West, 22.43 feet to the point and place of beginning.

Said premises are the same and all the same premises described in a certain Quit-Claim Deed from Richard L. Selden to Paul B. Selden dated July 24, 1981 and recorded in Volume 70 at Page 1083 of the Lyme Land Records.

IGHE AND CERNING
75 MAIN STREET
LAKESIDE, CONNECTICUT
860-727-8188

VOL 71 PAGE 228

Said premises are shown on a certain map entitled "Land of Paul Selden Lyme, Ct," dated May 22, 1981 and prepared by Richard W. Gates, Land Surveyor, which map is filed or to be filed in the office of the Lyme Town Clerk.

RECEIVED 12-21-81 AT 9:55 A.M.

AND RECORDED BY MESTANK MYERS

ATTEST: TOWN CLERK.

TIGHE AND SENNING

WARRANTY DEED

To all People to Whom these Presents shall Come, Greeting:

Know Ye, That, We, GERARD J. LAWRENCE and FLEUR HAHNE LAWRENCE,
of Lyme, Connecticut, for the consideration of FOUR MILLION DOLLARS (\$4,000,000.00)
received to our full satisfaction of BEVERLY PLATNER, of Guilford, Connecticut, do give,
grant, bargain, sell and confirm unto the said Beverly Platner:

SEE SCHEDULE A ATTACHED HERETO AND MADE A PART HEREOF.

The Grantee assumes and agrees to pay all taxes hereinafter becoming due and payable.

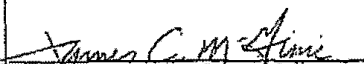
To Have and to Hold the above granted and bargained premises, with the appurtenances
thereof, unto the said Grantee, her heirs and assigns forever, to her and their own proper use and
behoof.


And Also, We the said Grantors do for ourselves, our heirs, executors and administrators,
covenant with the said Grantee, her heirs and assigns, that at and until the enrolling of these
presents, we are well seized of the premises, as a good indefeasible estate in FEE SIMPLE; and
have good right to bargain and sell the same in manner and form as is above written, and that the
same is free from all incumbrances whatsoever, except as hereinbefore mentioned.

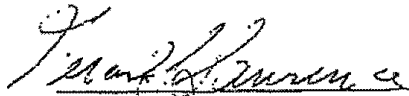
And Furthermore, We the said Grantors do by these presents bind ourselves and our
heirs, executors and administrators forever to WARRANT AND DEFEND the above granted
and bargained premises to her the said Grantee, her heirs and assigns, against all claims and
demands whatsoever, except as hereinbefore mentioned.

In Witness Whereof, We have hereunto set our hands and seals this 1st day of May, 2007.

Signed, sealed and delivered
in the presence of


JAMES C. MCGUIRE


Cole He HARRON


Gerard J. Lawrence


Fleur Hahne Lawrence

McGuire & McGuire
63 Federal Street
New London, CT 06320
860-443-4157

State \$36,000.00
Conveyance Tax Received


Town Clerk of Lyme

Town \$10,000
Conveyance Tax Received



Town Clerk of Lyme

EXHIBIT B

A 30' drainage easement as shown on a survey entitled, "Land of Paul Selden Lyme, CT" dated November 7, 1985, prepared by Richard W. Gates and filed in the office of the Town Clerk of Lyme in File #6, A-5.

Notes, facts, conditions and easements as shown on the above-referenced map.

Riparian rights of others in and to Selden Cove, Selden Creek, Connecticut River and any water which runs through or abuts said property.

The provisions of all governmental laws, ordinances, regulations and orders applicable to the premises or to the use thereof, real property taxes assessed in respect of the premises by the Town of Lyme on the List of October 1, 2006.

Reference may also be had to a plan entitled:

"Resubdivision Plan Lot 2 ALBERT W. SELDEN, ET AL Showing Proposed LOTS 2, 3, 4, 5 & 6 Selden Road - Lyme, Connecticut Date February 4, 1977, Scale 1" = 100' revised to December 30, 1982, Angus L. McDonald & Associates, Inc. Engineers - Planners - Surveyors Old Saybrook, Connecticut.

Received May 3, 2007 2:50 PM
and recorded by me

Attest: [Signature] Town Clerk

SCHEDULE A

All that certain piece or parcel of land, with the buildings and improvements thereon, located on the southerly side of Selden Road in the Town of Lyme, County of New London and State of Connecticut, and shown on a certain map entitled "Land of Paul Selden Lyme, CT." dated November 7, 1985, and prepared by Richard W. Gates, land surveyor, which map is on file (File #6, A-5) in the office of the Lyme Town Clerk. Said Parcel of land being more particularly bounded and described as follows:

Beginning at a point in the northerly boundary of the premises herein described at a point marked by a merestone, and thence run the following courses and distances: (1) South 50 degrees 39' 50" West; 410.33 feet to a point marked by an iron pipe; (2) South 50 degrees 39' 50" West, 80 feet, more or less to the waters of the Connecticut River; (3) southerly along the waters of the Connecticut River, 850 feet, more or less, to a point; (4) southeasterly, easterly and northeasterly along the waters of the Connecticut River and Selden Creek, 950 feet, more or less, to a point; (5) northerly and northwesterly along the waters of Selden Cove, 210 feet, more or less to a point; (6) northwesterly along the waters of Selden Cove and a bulkhead, 154 feet, more or less, to a point (7) northerly, northwesterly and northerly along the waters of Selden Cove to the point where the northeasterly boundary line of 30' drainage easement shown on said map intersects the waters of Selden Cove; (8) northwesterly and northerly along the northeasterly boundary of said 30' drainage easement to a point in the southerly line of Selden Road as shown on said map; (9) south 62 degrees 41' 50" West, along the southerly line of Selden Road 30 feet to a point marked by a merestone; (10) westerly in the arc of a curve to the right, having a radius of 477.28 feet, an arc distance of 112.88 feet to a point marked by a merestone; (11) northwesterly in the arc of a curve to the right, having a radius of 190 feet, an arc distance of 53 feet more or less to a point; (12) northwesterly in the arc of a curve to the right, having a radius of 190 feet, an arc distance of 82 feet to a point; (13) northwesterly in the arc of a curve to the right, having a radius of 190 feet, an arc distance of 42 feet to a point marked by a merestone; (14) South 69 degrees 42' 50" West, 22.43 feet to the point and place of beginning.

Being the same premises described in a Warranty Deed from Richard H. Whitehead a/k/a Richard H. Whitehead, III and Rosa Girona-Whitehead a/k/a Rosa Girona Whitehead to Gerald J. Lawrence and Fleur Hahne Lawrence dated March 11, 1997, and recorded in Volume 103, Page 802 of the Lyme Land Records. Also being the same premises described in Quit Claim Deed from Gerard J. Lawrence to Fleur Hahne Lawrence dated March 14, 1997, and recorded in Volume 103, Page 806 of said Land Records; and in Quit Claim Deed from Fleur Hahne Lawrence to Gerard J. Lawrence and Fleur Hahne Lawrence dated January 9, 2003, and recorded in Volume 122, Page 236 of said Land Records.

Said premises are conveyed subject to:

A certain Declaration of Restrictive Covenants in favor of and enforceable by the Lyme Land Conservation Trust dated November 25, 1981, and recorded in Volume 71 at Page 223 of the Lyme Land Records.

The rights of others to use the paved driveway located on the premises herein and which driveway runs in a southeasterly direction to the dock, paved area and boat launching area fronting Selden Cove, as a means of ingress and egress to the aforesaid dock, paved area and boat launching area; and to the rights of others to use the aforesaid dock, paved area and boat launching area as of record appears; and together with all rights which the Grantors have to require others to contribute to the cost of maintenance of said areas. (Reference may be had to Volume 68, Pages 512 and 514; Volume 67, Page 560; Volume 68, Page 235 and Volume 68, Page 150; Volume 67, Page 72; Volume 66, Page 407; and Volume 66, Page 585.)

A pedestrian easement in favor of Anthony Enders as set forth in a deed dated December 21, 1992, and recorded on December 23, 1992, in Volume 93 at Page 853 of the Lyme Land Records.


Easement to the Connecticut Light & Power Company dated May 23, 1979, and recorded August 23, 1979, at Volume 69, Page 210 of the Lyme Land Records.

STATE OF CONNECTICUT:

ss. New London

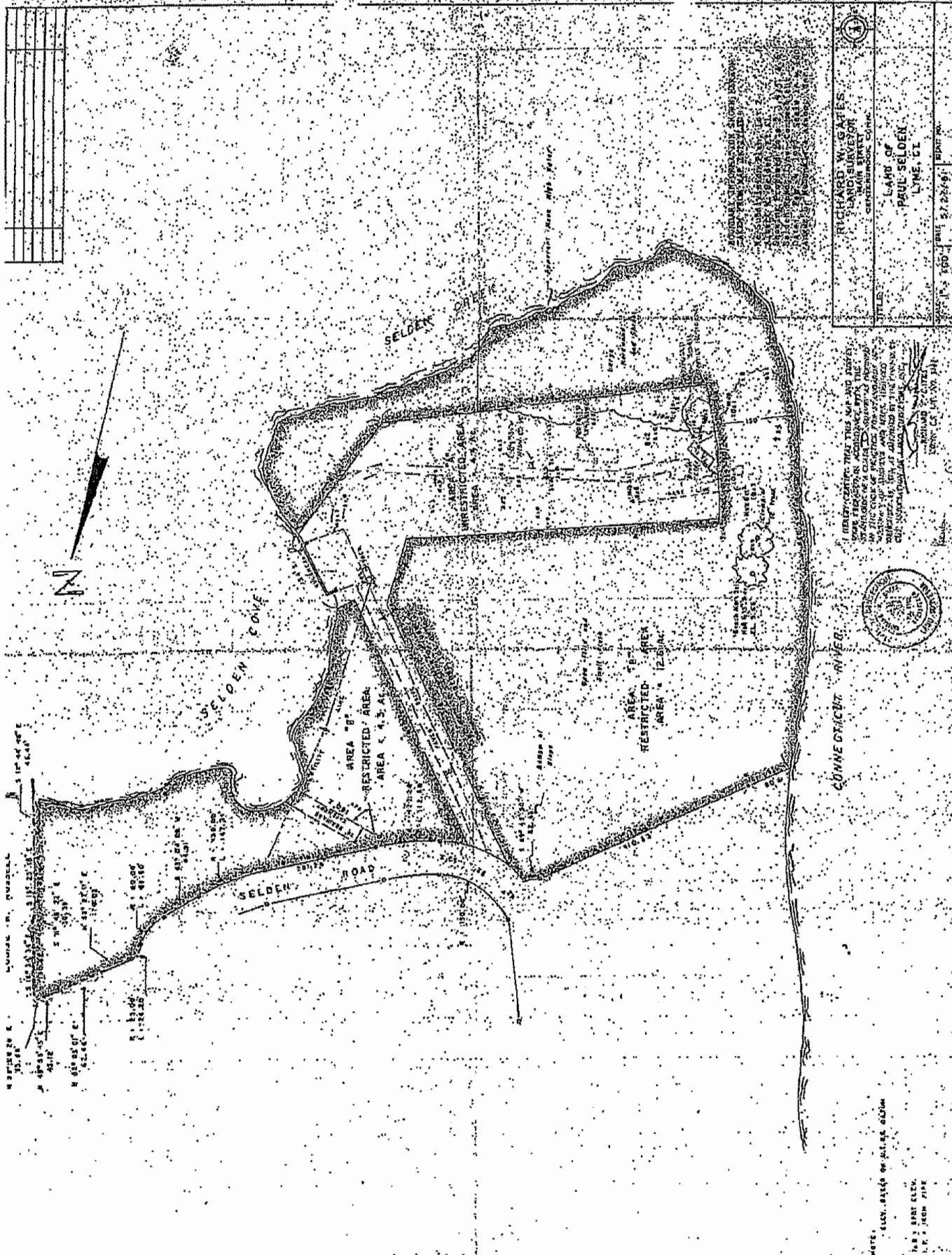
COUNTY OF NEW LONDON:

The foregoing instrument was acknowledged before me this 1st day of May, 2007, by
GERARD J. LAWRENCE and FLEUR HAHNE LAWRENCE.


Commissioner of the Superior Court

Latest address of Grantor:
109 Trailwood Drive
Golford, CT 06437

Ann E. McGuire
Federal Street
Newtown, CT 06459
0-443-4337



RICHARD W. GATES
LAND SURVEYOR
MAIN STREET
CENTERSHOP, CONN.

LAND OF
PAUL SELOEN
LYME CT

7-22-61	EXP. NO.
---------	----------

100

THE UNIVERSITY OF CHICAGO
IN THE CASE OF PRACTICE FOR ADVANCEMENT
OF THE UNIVERSITY AND THE
UNIVERSITY OF CHICAGO
CHICAGO, ILL. 60637

1875 Dec 21



100

NOTE:
- ELEV. BASED ON M.S.M. SURVEY
TANKY BERT ELEV.
L.P. = 1000 PISE

1990

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EXHIBIT C

A52

DOCKET NO. KNL-CV-09-6001607-S

LYME LAND CONSERVATION
TRUST, INC.*Plaintiff*

v.

BEVERLY PLATNER

Defendant

: SUPERIOR COURT

: JUDICIAL DISTRICT OF
: NEW LONDON

: AT NEW LONDON

: JANUARY 30, 2013

MOTION TO INTERVENE

Pursuant to Connecticut Practice Book § 9-18, George Jepsen, Attorney General of the State of Connecticut, hereby moves this Court for an order permitting him to intervene as a party plaintiff on behalf of the public interest in conservation restrictions of land and water areas. The Attorney General makes this application pursuant to his powers and obligations under Conn. Gen. Stat. § 47-42c to "enforce the public interest in such restrictions" and under Conn. Gen. Stat. § 52-560a "to restore the land to its condition as it existed prior to [violations of a conservation easement]."

In support of this Motion to Intervene, the Attorney General represents the following:

1. The plaintiff, Lyme Land Conservation Trust, Inc. ("LLCT"), is the owner of a conservation restriction, as defined by Conn. Gen. Stat. § 47-42a, pursuant to a declaration of restrictive covenants dated November 25, 1981, and recorded on December 21, 1981, in Volume 71, page 223 of the Lyme land records (the "Conservation Restriction").

NO ORAL ARGUMENT REQUESTED
NO TESTIMONY REQUIRED

FILED

JAN 30 2013

SUPERIOR COURT - NEW LONDON
JUDICIAL DISTRICT AT NEW LONDON

2. The conservation restriction is on property located at 66 Selden Road, Lyme, Connecticut (the "Property"), which is currently owned by Beverly Platner.

3. The LLCT brought this action on or about October 14, 2011, initially seeking a declaratory judgment to resolve substantial questions and issues in dispute with respect to the Conservation Restriction and the protected areas on the Property that are subject to the restriction.

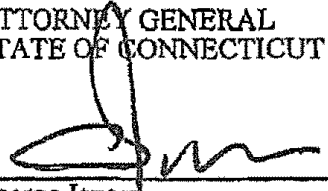
4. On June 9, 2011, the court granted the LLCT's Motion to Amend the Complaint, whereby the LLCT withdrew the declaratory judgment claim and inserted a claim against Platner for violations of the Conservation Easement.

5. The Attorney General has a direct interest in this matter pursuant to Conn. Gen. Stat. §§ 47-42c and 52-560a. Subsequent to the Amendment of the Complaint and prior to the filing of this Motion to Intervene, the Attorney General engaged the parties in an attempt—ultimately unsuccessful—to address and resolve his concerns without the necessity of seeking to intervene in the litigation.

WHEREFORE, the Attorney General respectfully requests that he be permitted to intervene as a party plaintiff in this action. A Memorandum of Law in support of this Motion to Intervene is submitted herewith.

ATTORNEY GENERAL
STATE OF CONNECTICUT

BY:


George Jepsen
Juris No. 432104
55 Elm Street, P.O. Box 120
Hartford, CT 06141-0120
P: 860-808-5318
F: 860-808-5387
AG.Jepsen@ct.gov

Gary W. Hawes, AAG
Juris No. 415091
55 Elm Street, P.O. Box 120
Hartford, CT 06141-0120
P: 860-808-5020
F: 860-808-5347
gary.hawes@ct.gov

ORDER

The foregoing motion, having been heard, is hereby ordered:

GRANTED / DENIED

Judge

-3-

A55

NO. CV 09 6001607

LYME LAND CONSERVATION
TRUST, INC.

SUPERIOR COURT

JUDICIAL DISTRICT OF NEW LONDON
AT NEW LONDON

V.

BEVERLY PLATNER, ET AL

MAY 30, 2013

MEMORANDUM OF DECISION
RE: MOTION TO INTERVENE (#124)

On October 14, 2009, the plaintiff, Lyme Land Conservation Trust, Inc., filed its original application for declaratory judgment to resolve substantial questions and issues in dispute with respect to a conservation restriction as it applies to protected areas on the property owned by the defendant, Beverly Platner, that are subject to the restriction. On June 9, 2011, the court, *Cosgrove, J.*, granted the plaintiff's request to amend its complaint, at which time the plaintiff withdrew its declaratory judgment claim and filed a two count complaint against the defendant for anticipated violations of the conservation easement. On January 15, 2013, the plaintiff filed a second amended complaint.

FILED

MAY 29 2013

SUPERIOR COURT - NEW LONDON
JUDICIAL DISTRICT AT NEW LONDON

5-30-13 copies sent to counsel

A56

124.50

On January 30, 2013, George Jepsen, attorney general of the state of Connecticut, filed a motion to intervene, pursuant to Practice Book § 9-18 and General Statutes §§ 47-42c and 552-560a. On March 8, 2013, the defendant filed an objection to the motion to intervene. The defendant submitted the following evidence with her objection: return of service upon Richard Blumenthal, former attorney general of the state of Connecticut, dated October 24, 2009; a letter dated June 11, 2010, from Scott Koschwitz (Koschwitz), assistant attorney general of the state of Connecticut, to Attorney Frederick Gahagan (Gahagan) regarding his appeal filed on behalf of the plaintiff; a letter dated June 11, 2010, from Koschwitz to Attorney Santa Mendoza regarding his appeal filed on behalf of the defendant; an excerpt from the deposition of Gahagan, dated June 28, 2012; and a memorandum of decision on a motion to intervene in *Walker v. Branford Planning & Zoning Commission*, Superior Court, judicial district of New Haven, Docket No. CV 10 6009763 (September 28, 2010, *Corradino, J.T.R.*). The matter was argued at short calendar on April 22, 2013.

BACKGROUND

In its amended complaint, the plaintiff alleges the following facts. The plaintiff is the holder and owner of a conservation restriction, as defined by General Statutes § 47-42a, contained in a declaration of restrictive covenants dated November 25, 1981, and recorded in the Lyme land records on December 21, 1981. All subsequent owners of portions of the protected property hold title subject to the terms, conditions and restrictions of the conservation restriction. The defendant is the current owner of 66 Selden Road in Lyme, Connecticut, substantial portions of which are protected by the conservation restriction.

The defendant filed an application with the Conservation Commission and Inland

Wetlands Agency for the town of Lyme on January 9, 2010. According to the defendant's application, as well as upon visual inspection, the plaintiff learned that the defendant violated or intends to violate the conservation restriction by engaging in several prohibited activities in or upon the protected areas in violation of General Statutes § 52-560a. In its prayer for relief, the plaintiff seeks various forms of injunctive relief, expenses and costs of litigation pursuant to § 52-560a (c) and damages pursuant to General Statutes § 52-570a (d).

LAW RE: MOTION TO INTERVENE

Connecticut law requires courts to permit the addition of a party when a nonparty seeking to intervene "has an interest or title which the judgment will affect." General Statutes § 52-107; Practice Book § 9-18.¹ "The decision whether to grant a motion for the addition of a party to pending legal proceedings rests generally in the sound discretion of the trial court. . . It must be kept in mind, however, that the rules of intervention should be liberally construed, in order to avoid multiplicity of suits and settle all related controversies in one action. . . . A proposed intervenor must allege sufficient facts, through the submitted motion and pleadings, if any, in order to make a showing of his or her right to intervene." (Internal quotation marks omitted.) *Schaghticoke Tribal Nation v. Harrison*, 264 Conn. 829, 838-39,

General Statutes § 52-107 provides: "The court may determine the controversy as between the parties before it, if it can do so without prejudice to the rights of others; but, if a complete determination cannot be had without the presence of other parties, the court may direct that such other parties be brought in. If a person not a party has an interest or title which the judgment will affect, the court, on his application, shall direct him to be made a party."

Practice Book § 9-18 provides: "The judicial authority may determine the controversy as between the parties before it, if it can do so without prejudice to the rights of others; but, if a complete determination cannot be had without the presence of other parties, the judicial authority may direct that they be brought in. If a person not a party has an interest or title which the judgment will affect, the judicial authority, on its motion, shall direct that person to be made a party."

826 A.2d 1102 (2003). "For purposes of judging the satisfaction of [the] conditions [for intervention, the court looks] to the pleadings, that is, to the motion for leave to intervene and to the proposed complaint or defense in intervention, and . . . [the court] accept[s] the allegations in those pleadings as true." (Internal quotation marks omitted.) *Kerrigan v. Commissioner of Public Health*, 279 Conn. 447, 457, 904 A.2d 137 (2006). "The inquiry is whether the claims contained in the motion, if true, establish that the proposed intervenor has a direct and immediate interest that will be affected by the judgment." (Internal quotation marks omitted.) *Id.*

"Most of our cases discuss the admission of new parties as coming within the 'broad discretion' of the trial court. . . . The nature of the right to intervene in Connecticut, however, has not been fully articulated. Where state precedent is lacking, it is appropriate to look to authorities under the comparable federal rule, in this case [r]ule 24 of the Federal Rules of Civil Procedure."² (Citations omitted; internal quotation marks omitted.) *Washington Trust Co. v. Smith*, 241 Conn. 734, 740, 699 A.2d 73 (1997).

"The distinction between intervention of right and permissive intervention, such as is

2

Rule 24 of the Federal Rules of Civil Procedure provides in relevant part: "(a) Intervention of Right. On timely motion, the court must permit anyone to intervene who: (1) is given an unconditional right to intervene by a federal statute; or (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

"(b) Permissive Intervention. (1) *In General*. On timely motion, the court may permit anyone to intervene who: (A) is given a conditional right to intervene by a federal statute; or (B) has a claim or defense that shares with the main action a common question of law or fact. (2) *By a Government Officer or Agency*. On timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on: (A) a statute or executive order administered by the officer or agency; or (B) any regulation, order, requirement, or agreement issued or made under the statute or executive order."

found in [r]ule 24 of the Federal Rules of Civil Procedure, has not been clearly made in Connecticut practice. . . . But there are also cases which make clear that intervention as of right exists in Connecticut practice.” (Citations omitted; internal quotation marks omitted.) *Washington Trust Co. v. Smith*, supra, 241 Conn. 739-40. Our Supreme Court has held that “[i]n order for a proposed intervenor to establish that it is entitled to intervene as a matter of right, [he] must satisfy a well established four element conjunctive test: [T]he motion to intervene must be timely, the movant must have a direct and substantial interest in the subject matter of the litigation, the movant’s interest must be impaired by disposition of the litigation without the movant’s involvement and the movant’s interest must not be represented adequately by any party to the litigation.” (Internal quotation marks omitted.) *BNY Western Trust v. Roman*, 295 Conn. 194, 205, 990 A.2d 853 (2010). “If any one of the four prongs is missing, the motion to intervene as of right should be denied.” *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 60 Conn. App. 134, 146, 758 A.2d 916 (2000).

In determining whether to grant a motion for permissive intervention, Connecticut trial courts “balance[] several factors [including]: the timeliness of the intervention, the proposed intervenor’s interest in the controversy, the adequacy of representation of such interests by other parties, the delay in the proceedings or other prejudice to the existing parties the intervention may cause, and the necessity for or value of the intervention in resolving the controversy [before the court] [A] ruling on a motion for permissive intervention would be erroneous only in the rare case [in which] such factors weigh so heavily against the ruling that it would amount to an abuse of the trial court’s discretion.” (Internal quotation marks omitted.) *Kerrigan v. Commissioner of Public Health*, supra, 279 Conn. 461.

ANALYSIS

I

The attorney general moves to intervene, pursuant to his powers and obligations under General Statutes §§ 47-42c and 52-560a, on behalf of the public interest in conservation restrictions of land and water areas. As an initial procedural issue, this court must determine whether either statute authorizes the attorney general to bring an action in superior court to enforce a restrictive covenant such as the one at issue in the present case.

For the purposes of § 47-42c, a “conservation restriction” is defined as “a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land described therein, including, but not limited to, the state or any political subdivision of the state, or in any order of taking such land whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming, forest or open space use.” General Statutes § 47-42a (a). General Statutes § 47-42c explicitly authorizes the attorney general to “bring an action in the Superior Court to enforce the public interest” in “conservation and preservation restrictions.” See *McEvoy v. Palumbo*, Superior Court, judicial district of Litchfield, Docket No. CV 10 6002253 (November 16, 2011, *Danaher, J.*) (discussing that the legislature, in drafting § 47-42c, specifically named “only the Attorney General as the entity empowered to bring conservation enforcement actions in Superior Court” to the exclusion of all others).

In the present case, the plaintiff’s second amended complaint seeks enforcement of the conservation restriction pursuant to §§ 47-42c and 52-560a. The defendant admits in her

objection to the motion to intervene that the alleged easement is regulatory and concedes that it is a conservation restriction. Therefore, this court finds that § 47-42c applies to the present case and, as such, authorizes the attorney general to maintain a conservation enforcement action in superior court. Because the attorney general is authorized to bring an enforcement action in the superior court pursuant to § 47-42c, this court need not address the attorney general's power pursuant to § 52-560a.

II

In support of his motion to intervene, the attorney general argues that he meets the standards for intervention as of right because the motion is timely, he has a direct and substantial interest in this matter and no party can adequately represent his interests in this case. Alternatively, he argues that his interests in the present case meet the standards for permissive intervention. In her objection to the motion to intervene, the defendant argues that the attorney general's motion is untimely, the public does not have an interest in the present case and, as a result, the attorney general has no interest to enforce and, finally, the attorney general has not shown how his interests are inadequately represented. The court first will address the attorney general's claim regarding intervention as of right.

As discussed, *supra*, the "four element, conjunctive inquiry governing the decision on a motion for intervention as a matter of right" requires the following: "[T]he motion to intervene must be timely, the movant must have a direct and substantial interest in the subject matter of the litigation, the movant's interest must be impaired by disposition of the litigation without the movant's involvement and the movant's interest must not be represented adequately by any party to the litigation." (Internal quotation marks omitted.) *Kerrigan v.*

Commissioner of Public Health, supra, 279 Conn. 456-57.

The first prong, timeliness, “involves a determination of how long the intervenor was aware of an interest before he or she tried to intervene, any prejudicial effect of intervention on the existing parties, any prejudicial effect of a denial on the applicant and consideration of any unusual circumstances either for or against timeliness. . . . Factors to consider also include the nature of the interest and the purpose for which the intervenor is seeking to be brought into the action.” (Citation omitted; internal quotation marks omitted.) *BNY Western Trust v. Roman*, supra, 295 Conn. 208-09. Though the “timeliness requirement is applied more leniently for intervention of right than for permissive intervention . . . [t]he dilatory nature of a motion to intervene is always a factor for a trial court to consider.” (Citation omitted; internal quotation marks omitted.) *Id.*, 209.

The attorney general argues that his motion to intervene is timely because the “litigation has not progressed substantially and the parties will not be prejudice” if the court grants the motion. The defendant argues that the motion is not timely, as it was not filed until January 30, 2013, over thirty-nine months after the summons was issued on October 14, 2009. The plaintiff submitted as evidence a return of service demonstrating that on October 13, 2009, a state marshal sent, via certified mail, to the attorney general a true and attested copy of the summons, the complaint and all exhibits. Nevertheless, when the plaintiff brought the present action in 2009, it initially sought a declaratory judgment to resolve issues in dispute with respect to the conservation restriction and the protected areas on the defendant’s property. It was only on June 9, 2011, when the court, *Cosgrove, J.*, granted the plaintiff’s request to amend the complaint that the claim became an enforcement action. While it is true

that the attorney general waited almost eighteen months to file his motion to intervene, the court is not persuaded that this delay will have a prejudicial effect on the parties, as the pleadings have yet to close and no trial date has been set. Therefore, construing the rules of intervention as of right "liberally" and with a mind toward efficiency and in an effort to "avoid multiplicity of suits and settle all related controversies in one action"; *Schaghticoke Tribal Nation v. Harrison*, supra, 264 Conn. 839; this court finds that the attorney general's motion to intervene is not untimely.

Regarding the second and third prongs, "[a]n applicant for intervention has a right to intervene . . . where the applicant's interest is of such a direct and immediate character that the applicant will either gain or lose by the direct legal operation and effect of the judgment. . . [A] person or entity does not have a sufficient interest to qualify for the right to intervene merely because an impending judgment will have some effect on him, her, or it. The judgment to be rendered must affect the proposed intervenor's direct or personal rights, not those of another." (Citation omitted; internal quotation marks omitted.) *Kerrigan v. Commissioner of Public Health*, supra, 279 Conn. 257-58.

General Statutes § 47-42c explicitly authorizes the attorney general to bring an action in Superior Court to enforce the public's interest in a conservation restriction such as the one at issue. The attorney general's authority pursuant to § 47-42c is analogous to his authority pursuant to General Statutes § 3-125, which requires him "to represent the public interest in the protection of any gifts, legacies or devises intended for public or charitable purposes." In *Carl J. Herzog Foundation, Inc. v. University of Bridgeport*, 243 Conn. 1, 699 A.2d 995 (1997), our Supreme Court analyzed the policy behind the attorney general's authority

pursuant to § 3-125: "Public officials, such as the attorney general, [have] common-law standing to enforce charitable trusts because, by virtue of their positions, they are closely associated with the public nature of charities. A leading treatise on the subject states that '[t]he public benefits arising from the charitable trust justify the selection of some public official for its enforcement. Since *the [a]ttorney [g]eneral is the governmental officer whose duties include the protection of the rights of the people of the state in general*, it is natural that he has been chosen as the protector, supervisor, and enforcer of charitable trusts' G. Bogert & G. Bogert, *Trusts and Trustees* (2d Rev. Ed. 1991) § 411, pp. 2-3. Connecticut is among the majority of jurisdictions that have codified this common-law rule and has entrusted the attorney general with the responsibility and duty to 'represent the public interest in the protection of any gifts, legacies or devises intended for public or charitable purposes. . . .' General Statutes § 3-125." (Emphasis added.) *Id.*, 7 n.3.

Like his duties pursuant to § 3-125, the attorney general has a statutory duty to "bring an action in the Superior Court to enforce the public interest" in "conservation and preservation restrictions." General Statutes § 47-42c. Just as "the attorney general must be joined as a party to protect the public interest" in charitable trusts, this court finds that the attorney general's statutory duty to enforce the public's interest in conservation restrictions satisfies the second and third prongs of the test for intervention as of right. *Carl J. Herzog Foundation, Inc. v. University of Bridgeport*, *supra*, 243 Conn. 8 n.4.

Finally, "[t]he burden for establishing [the fourth prong of] inadequate representation of similar interests is minimal." *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, *supra*, 60 Conn. App. 149-50. "The most significant factor in assessing the [fourth prong of]

adequacy of representation is how the interests of the absentees compare with the interests of the present parties; the weight of the would-be intervenors' burden varies accordingly." *Id.*, 148. For example, "[i]nadequate representation was demonstrated where a party could have argued the intervenor's position, but the intervenor was in a better position to defend its own procedures. [See *Milford v. Local 1566*, 200 Conn. 91, 95, 510 A.2d 177 (1986).] Likewise, representation was deemed inadequate where the applicants' direct and limited interest was quite distinguishable from broad, general concerns of the plaintiffs. [See *State Board of Education v. Waterbury*, 21 Conn. App. 67, 74, 571 A.2d 148 (1990).]" (Internal quotation marks omitted.) *Id.*, 151.

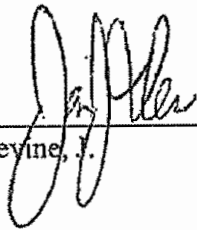
In the present case, the plaintiff seeks enforcement of the conservation restriction, as well as damages associated with enforcement. The attorney general, too, seeks enforcement of the conservation restriction. Though at first blush these interests seem to be identical, the attorney general's interest is not only in enforcing the public's interest in the present conservation restriction, but in preserving his interest in enforcing and ability to enforce restrictive covenants in the future. This interest is unique to the attorney general as a "governmental officer whose duties include the protection of the rights of the people of the state in general." (Internal quotation marks omitted.) *Carl J. Herzog Foundation, Inc. v. University of Bridgeport*, *supra*, 243 Conn. 7 n.3. Therefore, the attorney general has met a minimal showing of inadequate representation of his interest by the plaintiff, an existing, private party.

Because this court finds that the attorney general may intervene as of right, pursuant to the authority granted to him by General Statutes § 47-42c, it need not address the attorney

general's argument in support of permissive intervention.

ORDER

For the foregoing reasons, the court hereby grants the attorney general's motion to intervene (#124).



Devine, J.

DOCKET NO.: KNL-CV-09-6001607-S

LYME LAND CONSERVATION	:	SUPERIOR COURT
TRUST, INC. and GEORGE JEPSEN	:	
ATTORNEY GENERAL	:	JUDICIAL DISTRICT OF NEW LONDON
<i>Plaintiffs</i>	:	
	:	
v.	:	
	:	
BEVERLY PLATNER	:	
<i>Defendant</i>	:	JULY 17, 2013

COMPLAINT OF INTERVENOR PLAINTIFF

The Connecticut Attorney General, George Jepsen, was granted intervenor plaintiff status by the Court on May 29, 2013, pursuant to his jurisdiction under Conn. Gen. Stat. § 47-42c. The Attorney General hereby pleads his Complaint as follows:

COUNT I

1. The Lyme Land Conservation Trust, Inc. (the "Land Trust") is a Connecticut non-stock corporation with a principal place of business in the Town of Lyme, County of New London, and State of Connecticut.

2. The Land Trust is a charitable organization qualified under Section 501(c)(3) of the Internal Revenue Code, whose purposes include the conservation of land and water areas. The Land Trust has also been known in 1981 as the "Lyme Conservation Trust," at other times the "Lyme Land Trust," and the "Lyme Land Conservation Trust."

3. The Land Trust is the holder and owner of a Declaration of Restrictive Covenants conveyed to it in the name of the Lyme Conservation Trust on November 25, 1981, and recorded on December 21, 1981, in Volume 71, at Page 223 of the Lyme Land Records. In 1981 and

thereafter, the Land Trust was often known as, and referred to as, the "Lyme Conservation Trust".

4. The Declaration of Restrictive Covenants is a "conservation restriction" as defined by section 47-42a of the Connecticut General Statutes and is hereinafter referred to as the "Conservation Restriction".

5. The Conservation Restriction was conveyed by Paul B. Selden, the then owner of real property located at 66 Selden Road in Lyme, Connecticut, a legal description of which is set forth as Exhibit A to the Conservation Restriction.

6. By virtue of the conveyance of the Conservation Restriction all subsequent owners of the property described in Exhibit A to the Conservation Restriction hold title subject to its terms, conditions, and restrictions.

7. The Defendant, Beverly Platner, is the current owner of 66 Selden Road, Lyme, Connecticut (the "Platner Property") by virtue of a Warranty Deed dated May 1, 2007, and recorded on May 3, 2007, in Volume 139, at Page 913 of the Lyme Land Records.

8. The real property subject to the Conservation Restriction is identified as "AREA 'B' RESTRICTED AREA AREA = 12.6 Ac." and "AREA 'B' RESTRICTED AREA AREA = 4.3 Ac." on a plan entitled: "LAND OF PAUL SELDEN LYME, CT SCALE 1" = 100' DATE 5/22/81" Richard W. Gates, Land Surveyor, Main Street, Centerbrook, Connecticut, a copy of which is attached as Exhibit C to the Second Amended Complaint of the Land Trust (the "Protected Areas").

9. The Protected Areas consist of substantial portions of the Platner Property.

10. Upon information and belief, visual inspection, and according to the defendant's January 9, 2010, Application to the Conservation Commission and Inland Wetlands Agency for the Town of Lyme, she has violated and/or intends to violate the Conservation Restriction by engaging in the following activities in or upon the Protected Areas:

(a) Construction of a relocated driveway within a portion of the Protected Areas, which requires the destruction of vegetation, excavation and/or removal of materials, depositing of materials, and operation of vehicles in the Protected Areas, in violation of Sections 1.2, 1.3, 1.4 and 1.6 of the Conservation Restriction.

(b) Construction of "a fire department dry hookup" within the Protected Areas, which requires the construction and placement of a permanent structure, excavation and/or removal of material, destruction of vegetation and operation of vehicles in the Protected Areas, in violation of Sections 1.1, 1.2, 1.3, 1.4 and 1.6 of the Conservation Restriction.

(c) Change of the grade within the Protected Areas to the east and west of the driveway near its entrance to Selden Road, which requires the placing of materials and destruction of vegetation in Protected Areas, in violation of Section 1.3, 1.4 and 1.6 of the Conservation Restriction.

(d) Cutting and thinning the forest and/or the forest understory in that area identified as "Large Hardwood and Shrubs" on Exhibit D to the Land Trust's Second Amended Complaint without the plaintiff's determination that such activity is necessary or appropriate to carry out beneficial and selective non-commercial forestry practices in violation of Section 1.7 of the Conservation Restriction.

(e) Destroying existing natural and native grasses and vegetation in the Protected Areas and replacing them with lawn and ornamental landscaping in violation of Section 1.4 of the Conservation Restriction.

(f) Constructing, maintaining and using improvements and structures such as irrigation pipes and watering systems in the Protected Areas in violation of the Conservation Restriction.

(g) Dumping truck loads of dirt on the Protected Property in violation of Section 1.2 of the Conservation Restriction.

(h) Interfering with the plaintiff Land Trust's right to inspect and document the condition and boundaries of the Protected Areas in violation of Section 3.1 of the Conservation Restriction.

PRAYER FOR RELIEF

WHEREFORE, the intervenor plaintiff prays for the following relief:

1. An order, pursuant to Conn. Gen. Stat. § 47-42c, permanently enjoining the defendant, her agents, servants, and/or employees from taking any further action to implement any of the following in or upon the Protected Areas:

(a) the construction of a relocated driveway within the Protected Areas and associated improvements as set forth in paragraph 10(a) of this Complaint.

(b) the construction of a fire department dry hookup within the Protected Areas as set forth in paragraph 10(b) of this Complaint.

(c) the changing of the grade within the Protected Areas as set forth in paragraph 10(c) of this Complaint.

(d) any cutting and thinning the forest understory in that area identified as "Large Hardwood and Shrubs" on Exhibit D without the plaintiff's determination that such activity is necessary or appropriate to carry out beneficial and selective non-commercial forestry practices as set forth in paragraph 10(d) of this Complaint.

(e) the performing any of the activities described in paragraphs 10(e) – 10(h) of this Complaint.

2. An order, pursuant to Conn. Gen. Stat. § 47-42c, requiring the defendant, her agents, servants, and/or employees to do the following:

(a) Relocate and restore the driveway and associated improvements as described in paragraph 10(a) of this Complaint to a predominantly natural, scenic or open condition or in agricultural or forestry use consistent with the terms and stated purpose of the Conservation Restriction.

(b) Remove any "fire department dry hookup" as described in paragraph 10(b) of this Complaint from the Protected Areas and restore the area in accordance with the terms and Conservation Restriction.

(c) Restore the grade as described in paragraph 10(c) of this Complaint to its pre-existing condition and restore the area in accordance with the Conservation Restriction.

(d) Restore the Platner Property to its condition as it existed prior to the defendant's actions as described in paragraphs 10(d) – 10(h) of this Complaint.

3. An order, pursuant to Conn. Gen. Stat. § 47-42c, permanently enjoining the defendant, her agents, servants, and employees from violating the Conservation Restriction in the future.

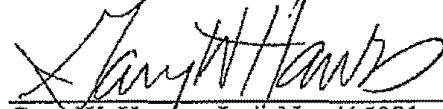
4. An order that the Court exercise continuing jurisdiction over this case until the defendant, Beverly Platner, has fully complied with the terms of the judgment.

5. Such other orders and further relief as justice and equity require.

The amount, legal interest or property in demand is more than \$15,000, exclusive of costs.

PLAINTIFF

GEORGE JEPSEN
ATTORNEY GENERAL

A handwritten signature in dark ink, appearing to read "Gary W. Hawes", is written over a horizontal line.

Gary W. Hawes, Juris No. 415091
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Docket N ^o KNL-CV09-6001607-s	:	
LYME LAND CONSERVATION	:	SUPERIOR COURT
TRUST, INC.	:	JUDICIAL DISTRICT OF
vs.	:	NEW LONDON AT NEW LONDON
PLATNER, BEVERLY	:	NOVEMBER 4, 2013

**DEFENDANT'S ANSWER & SPECIAL DEFENSES TO THE COMPLAINT OF THE
INTERVENING PLAINTIFF, GEORGE JEPSEN, ATTORNEY GENERAL**

The defendant hereby pleads to the "Complaint of Intervenor Plaintiff" filed by the Attorney General of the State of Connecticut, as follows:

BY WAY OF ANSWER

By Way of Answer to the preliminary allegations (§s 1-11):

1. As to the allegations stated in ¶ 1 of the so-called "Complaint of Intervenor Plaintiff" defendant lacks knowledge or information thereof sufficient to form a belief and, therefore, denies same and leaves the plaintiff to its proof.
2. As to the allegations stated in ¶ 2 of the so-called "Complaint of Intervenor Plaintiff" concerning whether the Land Trust is a charitable organization, whether it is qualified under § 501(c)(3) of the Internal Revenue Code and what its purposes are, the defendant lacks knowledge or information thereof sufficient to form a belief and, therefore, denies same and leaves the intervening plaintiff to his proof and as to the allegations concerning the fictitious names by which the Land Trust is alleged to have been known, defendant denies generally and specifically the allegations contained therein and adds that even if plaintiff were "...known in 1981 as the "Lyme Conservation Trust"..." it had not filed any trade name certificate with the town clerk of the Lyme, Connecticut as required by Connecticut General Statutes § 35-1.

3. As to ¶ 3 of the so-called "Complaint of Intervenor Plaintiff" defendant denies generally and specifically the allegations contained therein.
4. As to ¶ 4 of the so-called "Complaint of Intervenor Plaintiff" defendant admits that the instrument recorded in volume 71, at page 223 of the Lyme land records (a copy of which is attached to the so-called "Amended Complaint as Exhibit A) states in Article III at ¶ 3.3 that the restrictions contained in it are,
 "...intended as conservation restrictions' as
 that term is defined in Section 47-42a of the
 Connecticut General Statutes"
but defendant denies that the "Conservation Restriction" is valid or enforceable and denies that the intervening plaintiff has the power to enforce it.
5. As to ¶ 5 of the so-called "Complaint of Intervenor Plaintiff" defendant admits,
 - a) that Paul B. Selden (then of New York, New York) executed the instrument recorded in volume 71, at page 223 of the Lyme land records;
 - b) that "Exhibit A" thereof is a legal description, and
 - c) that Paul B. Selden (then of New York, New York) was an owner of real property,but denies that the instrument is valid, binding or enforceable against her and denies that plaintiff has the power to enforce it.
6. As to the allegations stated in ¶ 6 of the so-called "Complaint of Intervenor Plaintiff", defendant denies generally and specifically the allegations contained therein.
7. Defendant admits the allegations of ¶ 7 of the so-called "Complaint of Intervenor Plaintiff".
8. In response to ¶ 8 of the so-called ""Complaint of Intervenor Plaintiff"" and without admitting the validity of the "Conservation Restriction" and without admitting the legal sufficiency of the description, the defendant admits that the real property allegedly subject to the Conservation Restriction is identified as "AREA 'B' RESTRICTED AREA = 12.6 Ac." and "AREA 'B' RESTRICTED AREA = 4.3 Ac." on a map titled: "LAND OF PAUL SELDEN LYME, CT SCALE 1" = 100' DATE 5/22/81" prepared by Richard W. Gates, Land Surveyor, Main Street, Centerbrook, Conn. but only to so-called "Class D" standards.

9. In response to ¶ 9 of the so-called "Complaint of Intervenor Plaintiff" and without admitting that the alleged "Protected Areas" are actually protected by the "Conservation Restriction", the defendant that a substantial portion of the "Platner Property" is identified as "AREA 'B'" on the map prepared by Richard W. Gates and referred to above (although not all of said "AREA 'B'" is within the Platner Property).
10. As to the allegations stated in ¶ 10 of the so-called "Complaint of Intervenor Plaintiff", defendant responds as follows:
 - a) with respect to sub-¶ 10 (a) thereof: Beverly Platner admits that she relocated her driveway within a small, *de minimis* portion of what is depicted as "AREA 'B'" on the map prepared by Richard W. Gates and referred to above, but denies generally and specifically that such relocation of her driveway was in violation of the "Conservation Restriction" (and denies that the "Conservation Restriction" is valid anyway);
 - b) with respect to sub-¶ 10 (b) thereof: Beverly Platner admits that, *after discussions with the Lyme fire department*, she applied to the Lyme conservation commission for permission to construct a fire department dry hookup within a very small portion of what is depicted as "AREA 'B'" on the map prepared by Richard W. Gates and referred to above and that she received approval from that commission to do the work (and restore the disturbed area) but she denies generally and specifically that (i) she has done any of the approved work or (ii) presently intends to do any of the approved work pending the outcome of this case;
 - c) with respect to sub-¶ 10 (c) thereof: Beverly Platner denies generally and specifically the allegations contained therein;
 - d) with respect to sub-¶ 10 (d) thereof: Beverly Platner denies generally and specifically that anything she has done in the area identified as "Large Hardwood and Shrubs" on the Gates map referred to above is contrary to the work she proposed and that was approved on site by the plaintiff's lawyer, Fritz Gahagan, and the plaintiff's environmental consultant, Anthony Irving, during a site walk and inspection in July 2008;

- e) with respect to sub-¶ 10 (e) thereof: Beverly Platner denies generally and specifically,
 - (i) the existence of “natural and native grasses and vegetation” in the Protected Areas (and, consequently denies “destroying” such things);
 - (ii) “replacing” grasses and vegetation with “lawn”; and
 - (iii) any violation of “Section 1.4” of the “Conservation Restriction”Beverly Platner admits having cultivated and/or harvested flowers and forest products in accordance with non-commercial forestry practices and having planted shrubs and the like within so-called “AREA 'B'”, and in accordance with the reservations contained in Article II of the “Conservation Restriction.”
- f) with respect to sub-¶ 13 (f) thereof: Beverly Platner admits maintaining and using a watering system within portions of so-called “AREA 'B'”, but denies generally and specifically the balance of the allegations contained therein including that denying that a watering system should be considered a “structure” under the “Conservation Restriction” or that the watering system is “upon” the land within the meaning of the “Conservation Restriction”;
- g) with respect to sub-¶ 13 (g) thereof: Beverly Platner denies generally and specifically the allegations contained therein.
- h) with respect to sub-¶ 13 (h) thereof: Beverly Platner denies generally and specifically the allegations contained therein.

BY WAY OF COUNTERCLAIM

First Count: Application for Declaratory Judgment re
the Validity of Conservation Restriction:

1. The Lyme Land Conservation Trust, Inc. ("Land Trust") claims in its complaint to be the owner or holder of a "conservation restriction", as defined by Section 47-42a of the Connecticut General Statutes, by virtue of an instrument titled a "Declaration of Restrictive Covenants" executed by Paul Selden (a predecessor in title to the defendant (and counterclaim plaintiff) Beverly Platner) to the "Lyme Conservation Trust" recorded on December 21, 1981 in Volume 71, at Page 223 of the Lyme Land Records, a copy of which instrument is attached to plaintiff's complaint or second amended complaint as Exhibit A (the "Conservation Restriction").

2. The defendant and counterclaim plaintiff, Beverly Platner, is the current owner of 66 Selden Road, Lyme, Connecticut (the "Platner Property") by virtue of a Warranty Deed dated May 1, 2007 and recorded on May 3, 2007 in Volume 139, at Page 913 of the Lyme Land Records, a copy of which is attached to plaintiff's complaint or second amended complaint as Exhibit B.

3. The Platner Property is a developed house lot comprising about 18.7 acres, of which the Land Trust claims about \pm 14.3 acres is subject to the Conservation Restriction and of which the Land Trust admits that about \pm 4.4 acres is "unrestricted" (by the Conservation Restriction).

4. The Lyme Conservation Commission, which acts as the wetlands agency for the town of Lyme, Connecticut imposed the restriction upon Paul Selden and/or extracted the Conservation Restriction from Paul Selden under the threat that Mr. Selden would not otherwise be able to develop any of his more than 18 acres, historically known as Selden Point, (which was the very first such restriction extracted by the Conservation Commission).

5. There is no statutory authority in the state of Connecticut that allows any local Connecticut wetlands commission to impose or extract a conservation restriction or easement as a condition for its issuance of a wetlands permit.

6. The development of the 4.4 or so acres of the “unrestricted” area on the Platner Property did not in fact have any actual adverse impact on the inland wetlands there.

7. Since the Lyme Conservation Commission is not a “mini EPA” (that is, said commission is not a state version of the federal Environmental Protection Agency) the conditions imposed or exactions demanded must be limited to the protection of wetlands and watercourses within its jurisdiction.

8. There was not (and is not) any significant factual nexus between the powers, purposes and legitimate concerns of the Lyme Conservation Commission acting as a wetlands agency to impose or require as a condition of approval of a wetlands permit for what is now the Platner Property, the restrictions contained in the Conservation Restriction (at least as the plaintiff Land Trust and Attorney General seek to have the Restriction’s provisions interpreted).

Second Count: Application for Declaratory Judgment re the meaning
of provisions of the Conservation Restriction:

1.— 3. The allegations set forth in paragraphs 1 through 3 of the First Count are hereby incorporated by reference and re-alleged as paragraphs 1 through 3 of the Second Count as though set forth in full.

4. By writ of summons dated October 9, 2009 the plaintiff and counterclaim defendant, Land Trust, commenced an action for Declaratory Judgment concerning the Conservation Restriction and alleging, *inter alia*, that,

a) in order for the Land Trust to defend and protect its alleged interests and the public's interest in the Declaration of Restrictive Covenants it is necessary that the: ... scope and extent of the restrictions contained in the Declaration of Restrictive Covenants, be judicially determined; and

b) there are actual bona fide and substantial questions and issues in dispute and a substantial uncertainty of legal relations requiring judicial determination in order for the Land Trust to enforce its rights in the Protected Areas arising under the Declaration of Restrictive Covenants.

5. Instead of timely objecting to or complying with the defendant's request to revise dated and filed August 23, 2010 (docket entry # 110.00), the Land Trust filed a request for leave to amend complaint (docket entry # 111.00) seeking to "withdraw its Declaratory Judgment claim" against the defendant and "to add a count against defendant Beverly Platner for [alleged] violations of" the Declaration of Restrictive Covenants seeking injunctive relief and attorneys' fees, which request the court granted on June 9, 2011 "although the plaintiff has failed to comply strictly with the requirements of the Practice Book".

6. Despite the plaintiff Land Trust's withdrawal of its claim for a declaratory judgment, there remain actual bona fide and substantial questions and issues in dispute and a substantial uncertainty of legal relations requiring judicial determination in order for the defendant and counterclaim plaintiff Beverly Platner to peaceably use her land free of unreasonable interference by the plaintiffs and counterclaim defendants.

7. Paragraph 3.3 or Article III of the Conservation Restriction expressly allows the defendant and counterclaim plaintiff to maintain the Protected Areas predominantly in their "scenic or open condition" and in an "open space use."

8. Article II of the Conservation Restriction expressly reserves to the defendant and counterclaim plaintiff the following rights:

"[t]o create and maintain views and sight lines from [her] residential property... by the selective cutting, pruning or trimming of vegetation, provided that such action shall not have a significant adverse impact upon the Protected Areas;

"[t]o ... engage in the cultivation and harvesting of crops, flowers and hay; the planting of trees and shrubs and the mowing of grass ...; [and]

"[t]he cultivation and harvesting of forest products in accordance with sound non-commercial forestry practices."

9. From the time Paul Selden sold the Platner Property, the defendant and counterclaim plaintiff's predecessors in title without interference or objection from the plaintiff Land Trust,

- (a) maintained almost all of the non-wooded areas within the Protected Areas as mowed or tended grass; and
- (b) installed and used an underground sprinkler or irrigation system for part of that grassy area.

10. However, since the defendant and counterclaim plaintiff acquired the Platner Property in 2007, the plaintiff Land Trust has treated her differently than any previous owner and has publicly criticized her, accused her of violating the Conservation Restriction, and attempted to coerce her to behave as it alone interprets she should and without having sought any legal opinion as to the meaning of the Conservation Restriction beyond that of "Fritz" Gahagan.

11. Both plaintiffs have claimed that the uses the defendant and counterclaim plaintiff have made and the activities she has conducted in the Protected are in violation of the Conservation Restriction.

12. In order for the defendant and counterclaim plaintiff to defend and protect her rights under the Conservation Restriction it is necessary that the scope and extent of the restrictions contained therein be judicially determined and declared.

13. There are actual bona fide and substantial questions and issues in dispute and a substantial uncertainty of legal relations requiring judicial determination in order for the defendant and counterclaim plaintiff to preserve her rights in the Protected Areas arising under the Conservation Restriction and to exercise them without the plaintiffs' bullying and interference.

THE DEFENDANT: BEVERLY PLATNER

BY: 

John R. Lambert, her Attorney
25 Trumbull Place
North Haven, Connecticut 06473
Tel.#: 203.234.8121 Fax #: 203.234.8123
Juris No. 101328

Docket N^o. KNL- CV09-6001607-s :
 LYME LAND CONSERVATION : SUPERIOR COURT
 TRUST, INC. : JUDICIAL DISTRICT OF
 vs. : NEW LONDON AT NEW LONDON
 PLATNER, BEVERLY : NOVEMBER 4, 2013

STATEMENT OF DEMAND; PRAYER FOR RELIEF

WHEREFORE, the counterclaim plaintiff, Beverly Platner, claims and prays for the following:

With respect to the First Count:

a declaratory judgment declaring that the Conservation Restriction is void *ab initio* and invalid as being beyond the power of the Lyme Conservation Commission to have demanded (at least to the extent that the counterclaim defendants are, in this case seeking to have the Conservation Restriction interpreted).

With respect to the Second Count:

1. a declaratory judgment determining whether her uses of all of the Protected Areas are within her rights under the Conservation Restriction, including whether:
 - a. her cultivation of flowers, shrubs, plants and trees is rightful and allowed in the Protected Areas under Article II of the Conservation Restriction;
 - b. she has the right within the Protected Areas identified as "Large Hardwood and Shrubs" to mow invasive and other grasses and to thin the forest understory and remove invasive plant to create pleasing views of natural features such as Selden Creek, Selden Cove and Selden Island State Park and create and maintain views and sight lines; and put selective cutting pruning and trimming of vegetation

- c. she has the right to amend the soils within the Protected Areas, and use fertilizer and/or pesticides; while engaged in the cultivation and harvesting of crops, flowers and hay; and the planting of trees and shrubs and the mowing of grass
 - d. she may install, use, maintain and repair her sprinkler/irrigation system in Protected Areas (as her predecessors in title did) so long as the equipment thereof is substantially underground;
 - e. she may, from time to time, replace and/or displace plants, flowers, trees, shrubs and grass or grasses with other plants, flowers, trees, shrubs and grass or grasses, without interference from the plaintiffs;
 - f. whether her activities have retained the Protected Areas in natural, scenic or open condition and in agricultural, farming, forest and open space use; and
 - g. whether her activities have been competent, conscientious and effective preservation and management of the Protected Areas in a scenic or open condition and in open space use.
2. a permanent injunction restraining the counterclaim defendants,
- a. from interfering with any of the counterclaim plaintiff's activities the court declares to be rightful; and
 - b. from further badgering and bullying her with respect to the same,
- if the court should determine that the counterclaim plaintiff is acting within her rights within the Protected Areas under the Conservation Restriction.
3. Her costs.
4. Such other and further relief as to justice and equity appertains

THE DEFENDANT: BEVERLY PLATNER

BY: 

John R. Lambert, her Attorney
25 Trumbull Place
North Haven, Connecticut 06473
Tel.#: 203.234.8121 Fax #: 203.234.8123
Juris No. 101328

CERTIFICATE OF JOINDER OF/OR
NOTICE TO INTERESTED PERSONS

Pursuant to Connecticut Practice Book §17-56(b) this is to certify that all persons interested in the subject matter of the attached complaint have either been joined as parties to the action or given reasonable notice thereof.

The parties to whom notice was given by certified mail, return receipt requested, and the nature of their interests are as follows:

The Town of Lyme and its Lyme Conservation Commission, which is an interested party because it exacted and required the original Conservation Restriction from Paul Selden, the then owner of the Platner Property and other adjoining land as a condition of building any dwelling on the Platner Property; and

Joseph G Standart, III and Clinton S. Standart is an interested party as they are owners of land affected (or not affected) by the Conservation Restriction.


Certification

I hereby certify that, on this 2nd day of November 2013, a copy of the foregoing and attached were sent electronically by email to all counsel of record as follows:

As to plaintiff, the Lyme Land Conservation Trust, Inc.:
john.pritchard@pillsburylaw.com,
timcollins@wallersmithpalmer.com

As to the intervening plaintiff George Jepsen
Gary.Hawes@ct.gov

As to defendant, Beverly Platner:
santamendoza@comcast.net
jb@attorneyjanetbrooks.com



Commissioner of the Superior Court

THE DEFENDANT: BEVERLY PLATNER

BY: 

John R. Lambert, her Attorney
25 Trumbull Place
North Haven, Connecticut 06473
Tel.#: 203.234.8121 Fax #: 203.234.8123
Juris No. 101328

Docket N ^o .	KNL-CV09-6001607-S	:	
LYME LAND CONSERVATION		:	SUPERIOR COURT
TRUST, INC.		:	JUDICIAL DISTRICT OF
vs.		:	NEW LONDON AT NEW LONDON
PLATNER, BEVERLY		:	NOVEMBER 18, 2013

DEFENDANT'S AMENDED ANSWER & SPECIAL DEFENSES & COUNTERCLAIMS TO THE LYME LAND CONSERVATION TRUST, INC.'S SECOND AMENDED COMPLAINT

The defendant hereby amends her pleading to the "Second Amended Complaint" of the plaintiff Lyme Land Conservation Trust Inc., as follows:

BY WAY OF ANSWER

By Way of Answer to the preliminary allegations (§s 1-11):

1. As to the allegations stated in ¶ 1 of the so-called "Second Amended Complaint" defendant lacks knowledge or information thereof sufficient to form a belief and, therefore, denies same and leaves the plaintiff Land Trust to its proof.
2. As to the allegations stated in ¶ 2 of the so-called "Second Amended Complaint" concerning whether the Land Trust is a charitable organization, whether it is qualified under § 501(c)(3) of the Internal Revenue Code and what its purposes are, the defendant lacks knowledge or information thereof sufficient to form a belief and, therefore, denies same and leaves the plaintiff Land Trust to its proof
3. As to ¶ 3 of the so-called "Second Amended Complaint" concerning fictitious names by which the Land Trust was allegedly known, defendant denies generally and specifically the allegations contained therein and adds that *even if* plaintiff were "...known ... as the 'Lyme Conservation Trust'...", (a) it had not filed any trade name certificate with the town clerk of the Lyme, Connecticut as required by Conn. Gen'l Stat. § 35-1 and (b) is not referred to as the "Lyme Conservation Trust" in any other recorded conservation restriction..

4. As to ¶ 4 of the so-called "Second Amended Complaint" defendant denies generally and specifically the allegations contained therein.
5. As to ¶ 5 of the so-called "Second Amended Complaint" defendant admits that the instrument recorded in volume 71, at page 223 of the Lyme land records (a copy of which is attached to the so-called "Amended Complaint as Exhibit A) states in Article III at ¶ 3.3 that the restrictions contained in it are,
 "...intended as conservation restrictions' as
 that term is defined in Section 47-42a of
 the Connecticut General Statutes"
but defendant denies that the "Conservation Restriction" is valid or enforceable and denies that the plaintiff Land Trust has the power to enforce it.
6. As to ¶ 6 of the so-called "Second Amended Complaint" defendant admits,
 - a) that Paul B. Selden (then of New York, New York) executed the instrument recorded in volume 71, at page 223 of the Lyme land records;
 - b) that "Exhibit A" thereof is a legal description, and
 - c) that said Paul B. Selden was a "then-owner of real property",but denies that the instrument is valid, binding or enforceable against her and denies that plaintiff Land Trust has the power to enforce it.
7. As to the allegations stated in ¶ 7 of the so-called "Second Amended Complaint", defendant denies generally and specifically the allegations contained therein.
8. Defendant admits the allegations of ¶ 8 of the so-called "Second Amended Complaint".
9. In response to ¶ 9 of the so-called "Second Amended Complaint" and without admitting the validity of the "Conservation Restriction" and without admitting the legal sufficiency of the description, the defendant admits that the real property allegedly subject to the Conservation Restriction is identified as "AREA 'B' RESTRICTED AREA = 12.6 Ac." and "AREA 'B' RESTRICTED AREA = 4.3 Ac." on a map titled: "LAND OF PAUL SELDEN LYME, CT SCALE 1" = 100' DATE 5/22/81" prepared by Richard W. Gates, Land Surveyor, Main Street, Centerbrook, Conn. but only to so-called "Class D" standards.

10. In response to ¶ 10 of the so-called "Second Amended Complaint" and without admitting that the alleged "Protected Areas" are actually protected by the "Conservation Restriction", the defendant admits that a substantial portion of the "Platner Property" is identified as "AREA 'B'" on the map prepared by Richard W. Gates and referred to above (although not all of said "AREA 'B'" is within the Platner Property).
11. In response to ¶ 11 of the so-called "Second Amended Complaint", the defendant admits the existence of the alleged provision "3.6" but denies the validity of thereof.

By Way of Answer to the COUNT I:

12. Defendant hereby incorporates her responses to ¶s 1 through 11 of the so-called "Second Amended Complaint" as though repeated and set forth in full.
13. As to the allegations stated in ¶ 13 of COUNT I of the so-called "Second Amended Complaint", defendant responds as follows:
 - a) with respect to sub-¶ 13 (a) thereof: Beverly Platner admits that she relocated her driveway within a small, *de minimis* portion of what is depicted as "AREA 'B'" on the map prepared by Richard W. Gates and referred to above, but denies generally and specifically that such relocation of her driveway was in violation of the "Conservation Restriction" (and denies that the "Conservation Restriction" is valid anyway);
 - b) with respect to sub-¶ 13 (b) thereof: Beverly Platner admits that, *after discussions with the Lyme fire department*, she applied to the Lyme conservation commission for permission to construct a fire department dry hookup within a very small portion of what is depicted as "AREA 'B'" on the map prepared by Richard W. Gates and referred to above and that she received approval from that commission to do the work (and restore the disturbed area) but she denies generally and specifically that (i) she has done any of the approved work or (ii) presently intends to do any of the approved work pending the outcome of this case;
 - c) with respect to sub-¶ 13 (c) thereof: Beverly Platner denies generally and specifically the allegations contained therein;

- d) with respect to sub-¶ 13 (d) thereof: Beverly Platner denies generally and specifically that anything she has done in the area identified as "Large Hardwood and Shrubs" on the Gates map referred to above is contrary to the work she proposed and that was approved on site by the plaintiff's lawyer, Frederick B. "Fritz" Gahagan, and the plaintiff's environmental consultant, Anthony Irving, during a site walk and inspection in July 2008 and adds if the Conservation Restriction is valid, the right to cut and thin the forest and the right of mowing therein was reserved to under Article II of the Conservation Restriction.
- e) with respect to sub-¶ 13 (e) thereof: Beverly Platner denies generally and specifically,
- (i) the existence of "natural and native grasses and vegetation" in the Protected Areas (and, consequently denies "destroying" such things);
 - (ii) "replacing" grasses and vegetation with "lawn"; and
 - (iii) any violation of "Section 1.4" of the "Conservation Restriction"
- Beverly Platner admits having cultivated and/or harvested flowers and forest products in accordance with non-commercial forestry practices and having planted shrubs and the like within so-called "AREA 'B'", and in accordance with the reservations contained in Article II of the "Conservation Restriction."
- f) with respect to sub-¶ 13 (f) thereof: Beverly Platner admits maintaining and using a watering system within portions of so-called "AREA 'B'", but denies generally and specifically the balance of the allegations contained therein including that denying that a watering system should be considered a "structure" under the "Conservation Restriction" or that the watering system is "upon" the land within the meaning of the "Conservation Restriction";
- g) with respect to sub-¶ 13 (g) thereof: Beverly Platner denies generally and specifically the allegations contained therein.
- h) with respect to sub-¶ 13 (h) thereof: Beverly Platner denies generally and specifically the allegations contained therein.

By Way of Answer to the COUNT II:

14. Defendant hereby incorporates her responses to ¶s 1 through 11 of the so-called "Second Amended Complaint" and to ¶ 13 of "COUNT I" as though repeated and set forth in full.
15. As to the allegations stated in ¶ 15 of COUNT II of the so-called "Second Amended Complaint", defendant denies generally and specifically the allegations contained therein.

BY WAY OF SPECIAL DEFENSES TO BOTH COUNTS

First Special Defense

(Breach of the implied covenant of good faith and fair dealing.)

If (*as the plaintiff alleges*), (a) it is the holder of a valid Declaration of Restrictive Covenants and (b) that Declaration creates rights and obligations for both parties to this suit, then there is an implied covenant of good faith and fair dealing. Plaintiff has breached that implied covenant by,

- i) unreasonably withholding its consent (which it is authorized to give under ¶ 4.1 of the Conservation Restriction) to relocate the driveway which relocation was sought not only to correct a danger to the public and to the defendant but also to reduce pollution to tidal and inland wetlands and the waters of the state of Connecticut; and
- ii) seizing upon the relocation of the driveway as a ground for its instant action even though it publicly "applauded" the good sense of the proposal to relocate the driveway in comments before the inland wetlands agency of the town of Lyme;
- iii) unreasonably withholding its consent to allow the defendant to comply with the fire marshal's proposal for a dry hook-up to be implemented in a small part of the Protected Areas even though plaintiff is authorized to give such consent under ¶ 4.1 of the Conservation Restriction and even though no discernible harm to the Conservation Restriction's purposes would have resulted while, at the same time, the public interest in fire safety would have been enhanced by plaintiff's consent;

iv) unreasonably withholding its consent to allow the defendant to create within the Protected Areas a marsh/pond system that would promote the public interest expressed in the Conservation Restriction;

v) permitting refuse, trash, vehicle parts, rubbish, debris, junk, and other waste material to remain in Protected Areas for years without making any effort to remedy that visible violation, while persecuting the defendant (who cleaned up the very areas the Land Trust neglected) for exercising her rights under the Conservation Restriction;

vi) unilaterally and without permission from the defendant, bringing onto and using at the Platner Property paraphernalia not mentioned in the Conservation Restriction including but not limited to cameras and global positioning system instruments; and

vii) badgering the defendant and treating her differently than other owners of the Protected Areas and previous owners of the Platner Property, in, among other things,

1) allowing neighbors subject to the Conservation Restriction to remove or cut vegetation they wish to remove or cut but objecting to the defendant removing or cutting vegetation she wishes to remove or cut;

2) not treating the existence of an underground irrigation system in Protected Areas as a prohibited structure for a more than a decade before the defendant acquired the property and now claiming such an irrigation system is not allowed.

Second Special Defense

(Defendant's Actions are Authorized un Article of the Conservation Restriction)

Article II of the Conservation Restriction shields defendant from liability for actions taken pursuant to that section, as set forth in ¶s 2.1, 2.2, and 2.5. Defendant's actions undertaken pursuant to Section II include selective cutting, pruning or trimming vegetation to create and maintain views and sight lines from her residential property, conducting and engaging in the cultivation and harvesting of flowers, the planting of trees and shrubs and the mowing of grass, and the continued use of the Protected Areas for all purposes not inconsistent with the restrictions set forth in Article I of the Conservation Restriction.

Third Special Defense

(Waiver and Failure to Exhaust Administrative Remedies:

With respect to the approvals given by the Lyme wetlands agency to

(a) relocate a small portion of the driveway into Protected Areas and

(b) install a dry hook-up in a small part of the Protected Areas)

When defendant Beverly Platner applied to the Lyme inland wetlands agency to relocate her driveway and also to create and install a dry hook-up for the fire suppression and safety for the benefit of the town, plaintiff argued to the wetlands agency that the proposal would violate the Conservation Restriction and that the agency could not grant the application because of the provisions Conn. Gen. Stat. 47-42d. The plaintiff had statutory right to appeal and test the wetlands agency's decision approving the defendant's application. After the wetlands agency approved Beverly Platner's application (on April 21, 2010), plaintiff took an appeal against the inland wetlands agency with a return date of May 25, 2010 and filed the appeal as docket number KNL-CV10-6004258 S. Plaintiff, however, moved to withdraw its appeal in November 2010 under Conn. Gen. Stat. §8-8(n), in January 2011, withdrew its appeal. In so doing the plaintiff voluntarily waived its right to a judicial determination of whether the activities approved violated the Conservation Restriction.

Fourth Special Defense

(Equity should be done for all)

Under established Connecticut law "[o]ne who seeks equity must also do equity and expect that equity will be done for all" Plaintiff seeks equitable (injunctive) relief only for itself but fails to "do equity" or expect that equity will be done for the interests of protecting the wetlands or the interest in public safety.

Fifth Special Defense

(Unclean hands)

Plaintiff seeks equitable (injunctive) relief but comes to this court with unclean hands in that (a) it has never responded to Beverly Platner's request (presented to the plaintiff's board in January 2008) to create a marsh/pond system that would increase bird and other wildlife habitat and instead of responding immediately initiated and began concocting a "public relations" plan to discredit the defendant and justify this litigation.

Sixth Special Defense

(Ultra Vires; lack of proper corporate action)

Plaintiff commenced this litigation without proper and necessary corporate action and vote of its board of directors at a properly-noticed meeting of said board.

BY WAY OF COUNTERCLAIM

First Count: Application for Declaratory Judgment re
the Validity of Conservation Restriction:

1. The Lyme Land Conservation Trust, Inc. ("Land Trust") claims in its second Amended Complaint to be the owner or holder of a "conservation restriction", as defined by Section 47-42a of the Connecticut General Statutes, by virtue of an instrument titled a "Declaration of Restrictive Covenants" executed by Paul Selden (a predecessor in title to the defendant (and counterclaim plaintiff) Beverly Platner) to the "Lyme Conservation Trust" recorded on December 21, 1981 in Volume 71, at Page 223 of the Lyme Land Records, a copy of which instrument is attached to plaintiff's complaint or second amended complaint as Exhibit A (the "Conservation Restriction").

2. The defendant and counterclaim plaintiff, Beverly Platner, is the current owner of 66 Selden Road, Lyme, Connecticut (the "Platner Property") by virtue of a Warranty Deed dated May 1, 2007 and recorded on May 3, 2007 in Volume 139, at Page 913 of the Lyme Land Records, a copy of which is attached to plaintiff's complaint or second amended complaint as Exhibit B.

3. The Platner Property is a developed house lot comprising about 18.7 acres, of which the Land Trust claims \pm 14.3 acres is subject to the Conservation Restriction and of which the Land Trust admits that \pm 4.4 acres is "unrestricted" (by the Conservation Restriction).

4. The Lyme Conservation Commission, which acts as the wetlands agency for the town of Lyme, Connecticut imposed the restriction upon Paul Selden and/or extracted the Conservation Restriction from Paul Selden under the threat that Mr. Selden would not otherwise be able to develop any of his more than 18 acres, historically known as Selden Point, (which was the very first such restriction extracted by the Conservation Commission) even though it was already an approved subdivision lot reviewed by said commission.

5. There is no statutory authority in the state of Connecticut that allows any local Connecticut wetlands commission to impose or extract a conservation restriction or easement as a condition for its issuance of a wetlands permit.

6. The development of the 4.4 or so acres of the "unrestricted" area on the Platner Property did not in fact have any actual adverse impact on the inland wetlands there.

7. Since the Lyme Conservation Commission is not a "mini EPA" (that is, said commission is not a state version of the federal Environmental Protection Agency) the conditions imposed or exactions demanded must be limited to the protection of wetlands and watercourses within its jurisdiction.

8. There was not (and is not) any significant factual nexus between the powers, purposes and legitimate concerns of the Lyme Conservation Commission acting as a wetlands agency to impose or require as a condition of approval of a wetlands permit for what is now the Platner Property, the restrictions contained in the Conservation Restriction (at least as the plaintiff Land Trust and Attorney General seek to have the Restriction's provisions interpreted).

Second Count: Application for Declaratory Judgment re the meaning of provisions of the Conservation Restriction:

1.— 3. The allegations set forth in paragraphs 1 through 3 of the First Count are hereby incorporated by reference and re-alleged as paragraphs 1 through 3 of the Second Count as though set forth in full.

4. By writ of summons dated October 9, 2009 the plaintiff and counterclaim defendant, Land Trust, commenced an action for Declaratory Judgment concerning the Conservation Restriction and alleging, *inter alia*, that,

a) in order for the Land Trust to defend and protect its alleged interests and the public's interest in the Declaration of Restrictive Covenants it is necessary that the: ... scope and extent of the restrictions contained in the Declaration of Restrictive Covenants, be judicially determined; and

b) there are actual bona fide and substantial questions and issues in dispute and a substantial uncertainty of legal relations requiring judicial determination in order for the Land Trust to enforce its rights in the Protected Areas arising under the Declaration of Restrictive Covenants.

5. Instead of timely objecting to or complying with the defendant's request to revise dated and filed August 23, 2010 (docket entry # 110.00), the Land Trust filed a request for leave to amend complaint (docket entry # 111.00) seeking to "withdraw its Declaratory Judgment claim" against the defendant and "to add a count against defendant Beverly Platner for [alleged] violations of" the Declaration of Restrictive Covenants seeking injunctive relief and attorneys' fees, which request the court granted on June 9, 2011 "although the plaintiff has failed to comply strictly with the requirements of the Practice Book".

6. Despite the plaintiff Land Trust's withdrawal of its claim for a declaratory judgment, there remain actual bona fide and substantial questions and issues in dispute and a substantial uncertainty of legal relations requiring judicial determination in order for the defendant and counterclaim plaintiff Beverly Platner to peaceably use her land free of unreasonable interference by the plaintiffs and counterclaim defendants.

7. Paragraph 3.3 or Article III of the Conservation Restriction expressly allows the defendant and counterclaim plaintiff to maintain the Protected Areas predominantly in their "scenic or open condition" and in an "open space use."

8. Article II of the Conservation Restriction expressly reserves to the defendant and counterclaim plaintiff the following rights:

"[t]o create and maintain views and sight lines from [her] residential property... by the selective cutting, pruning or trimming of vegetation, provided that such action shall not have a significant adverse impact upon the Protected Areas;

"[t]o ... engage in the cultivation and harvesting of crops, flowers and hay; the planting of trees and shrubs and the mowing of grass ...; [and]

"[t]he cultivation and harvesting of forest products in accordance with sound non-commercial forestry practices."

9. From the time Paul Selden sold the Platner Property, the defendant and counterclaim plaintiff's predecessors in title without interference or objection from the plaintiff Land Trust,

- (a) maintained almost all of the non-wooded areas within the Protected Areas as mowed or tended grass; and
- (b) installed and used an underground sprinkler or irrigation system for part of that grassy area.

10. However, since the defendant and counterclaim plaintiff acquired the Platner Property in 2007, the plaintiff Land Trust has treated her differently than any previous owner and has publicly criticized her, accused her of violating the Conservation Restriction, and attempted to coerce her to act as it alone interprets she should act and without having sought any legal opinion as to the meaning of the Conservation Restriction beyond that of "Fritz" Gahagan.

11. Both plaintiffs have claimed that the uses the defendant and counterclaim plaintiff have made and the activities she has conducted in the Protected are in violation of the Conservation Restriction.

12. In order for the defendant and counterclaim plaintiff to defend and protect her rights under the Conservation Restriction it is necessary that the scope and extent of the restrictions contained therein be judicially determined and declared.

13. There are actual bona fide and substantial questions and issues in dispute and a substantial uncertainty of legal relations requiring judicial determination in order for the defendant and counterclaim plaintiff to preserve her rights in the Protected Areas arising under the Conservation Restriction and to exercise them without the plaintiffs' bullying and interference.

Third Count: Action to enforce the covenant arising pursuant to the Conservation Restriction:

1.— 3. The allegations set forth in paragraphs 1 through 3 of the First Count are hereby incorporated by reference and re-alleged as paragraphs 1 through 3 of the Second Count as though set forth in full.

4. If, as the plaintiff alleges, (a) it is the holder of a valid Declaration of Restrictive Covenants and (b) that Declaration creates rights and obligations for both parties to this suit, then there arises an implied covenant of good faith and fair dealing..

5. Plaintiff has breached that implied covenant by and the covenant arising pursuant to the Conservation Restriction by,

i) unreasonably withholding its consent (which it is authorized to give under ¶ 4.1 of the Conservation Restriction) to relocate the defendant and counterclaim plaintiff's driveway which relocation was sought not only to correct a danger to the public and to the defendant but also to reduce pollution to tidal and inland wetlands and the waters of the state of Connecticut; and

ii) seizing upon the relocation of the driveway as a ground for its instant action even though it publicly “applauded” the good sense of the counterclaim plaintiff’s proposal to relocate her driveway in comments the Land Trust’s attorney made before the inland wetlands agency of the town of Lyme;

iii) unreasonably withholding its consent to allow the defendant and counterclaim plaintiff to comply with the fire marshal’s proposal for a dry hook-up to be implemented in a small part of the Protected Areas even though plaintiff is authorized to give such consent under ¶ 4.1 of the Conservation Restriction and even though no discernible harm to the Conservation Restriction’s purposes would have resulted while, at the same time, the public interest in fire safety would have been enhanced by the Land Trust’s consent;

iv) unreasonably withholding its consent to allow the defendant and counterclaim plaintiff to create within the Protected Areas a marsh/pond system that would promote the public interest expressed in the Conservation Restriction;

v) permitting refuse, trash, vehicle parts, rubbish, debris, junk, and other waste material to remain in Protected Areas for years without making any effort to remedy that visible violation, while persecuting the defendant and counterclaim plaintiff (who cleaned up the very areas the Land Trust neglected) for exercising her rights under the Conservation Restriction;

vi) unilaterally and without permission from the defendant and counterclaim plaintiff, bringing onto and using at the Platner Property paraphernalia not mentioned in the Conservation Restriction including but not limited to cameras and global positioning system instruments; and

vii) badgering the defendant and counterclaim plaintiff and treating her differently than other owners of the Protected Areas and previous owners of the Platner Property, in, among other things,

1) allowing neighbors subject to the Conservation Restriction to remove or cut vegetation they wish to remove or cut, but objecting to the defendant and counterclaim plaintiff removing or cutting vegetation she wishes to remove or cut; and

2) not treating the existence of an underground irrigation system in Protected Areas as a prohibited structure for a more than a decade before the defendant and counterclaim plaintiff acquired the property and now claiming such an irrigation system is not allowed.

6) As a result of the Land Trust's breach of the covenant arising pursuant to the Conservation Restriction, the defendant and counterclaim plaintiff has suffered damage and expense but has no adequate remedy at law to force the Land Trust to act in good faith or to deal fairly.

THE DEFENDANT: BEVERLY PLATNER

BY: _____
John R. Lambert, her Attorney
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Tel.#: 203.234.8121 Fax #:
203.234.8123
Juris No. 101328

Docket N° KNL- CV09-6001607-S	:	
LYME LAND CONSERVATION	:	SUPERIOR COURT
TRUST, INC.	:	JUDICIAL DISTRICT OF
vs.	:	NEW LONDON AT NEW LONDON
PLATNER, BEVERLY	:	NOVEMBER 18, 2013

STATEMENT OF DEMAND; PRAYER FOR RELIEF

WHEREFORE, the counterclaim plaintiff, Beverly Platner, claims and prays for the following:

With respect to the First Count:

1. a declaratory judgment declaring that the Conservation Restriction is void *ab initio* and invalid as being beyond the power of the Lyme Conservation Commission to have demanded (at least to the extent that the counterclaim defendants are, in this case seeking to have the Conservation Restriction interpreted).
2. Her costs.
3. Such other and further relief as to justice and equity appertains

With respect to the Second Count:

1. a declaratory judgment determining whether her uses of all of the Protected Areas are within her rights under the Conservation Restriction, including whether:
 - a. her cultivation of flowers, shrubs, plants and trees is rightful and allowed in the Protected Areas under Article II of the Conservation Restriction;
 - b. she has the right within the Protected Areas identified as "Large Hardwood and Shrubs" to mow invasive and other grasses and to thin the forest understory and remove invasive plants to create pleasing views of natural features such as Selden Creek, Selden Cove and Selden Island State Park and create and maintain views and sight lines; and engage in selective cutting pruning & trimming of vegetation.

- c. she has the right to amend the soils within the Protected Areas, and use fertilizer and/or pesticides; while engaged in the cultivation and harvesting of crops, flowers and hay; and the planting of trees and shrubs and the mowing of grass
 - d. she may install, use, maintain and repair her sprinkler/irrigation system in Protected Areas (as her predecessors in title did) so long as the equipment thereof is substantially underground;
 - e. she may, from time to time, replace and/or displace plants, flowers, trees, shrubs and grass or grasses with other plants, flowers, trees, shrubs and grass or grasses, without interference from the plaintiffs;
 - f. whether her activities have retained the Protected Areas in natural, scenic or open condition and in agricultural, farming, forest and open space use; and
 - g. whether her activities have been competent, conscientious and effective preservation and management of the Protected Areas in a scenic or open condition and in open space use.
2. Her costs.
 3. Such other and further relief as to justice and equity appertains

With respect to the Third Count:

1. damages;
2. a positive and permanent injunction requiring the Land Trust to act in good faith and to deal fairly with the proposals the counterclaim plaintiff has submitted;
3. Her court costs including reasonable attorney's fees pursuant to ¶ 3.6 of the Conservation Restriction.
4. Such other and further relief as to justice and equity appertains.

THE DEFENDANT: BEVERLY PLATNER

BY: _____
John R. Lambert, her Attorney
25 Trumbull Place
North Haven, Connecticut 06473
Tel.#: 203.234.8121 Fax #: 203.234.8123
Juris No. 101328

**CERTIFICATE OF JOINDER OF/OR
NOTICE TO INTERESTED PERSONS**

Pursuant to Connecticut Practice Book §17-56(b) this is to certify that all persons interested in the subject matter of the attached complaint have either been joined as parties to the action or given reasonable notice thereof.

The parties to whom notice was given by certified mail, return receipt requested, and the nature of their interests are as follows:

The Town of Lyme and its Lyme Conservation Commission, which is an interested party because it exacted and required the original Conservation Restriction from Paul Selden, the then owner of the Platner Property and other adjoining land as a condition of building any dwelling on the Platner Property; and

Joseph G Standart, III and Clinton S. Standart is an interested party as they are owners of land affected (or not affected) by the Conservation Restriction.

Certification

I hereby certify that, on this ____ day of December 2013, a copy of the foregoing and attached were sent electronically by email to all counsel of record as follows:

As to plaintiff, the Lyme Land Conservation Trust, Inc.:
john.pritchard@pillsburylaw.com,
tmcollins@waltersmithpalmer.com

As to the intervening plaintiff George Jepsen
Gary.Hawes@ct.gov

As to defendant, Beverly Platner:
santamendoza@comcast.net
jb@attorneyjanetbrooks.com

THE DEFENDANT: BEVERLY PLATNER

BY: _____
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Commissioner of the Superior Court

NO. KNL-CV-09-6001607-S

SUPERIOR COURT

LYME LAND CONSERVATION
TRUST, INC., ET AL.

JUDICIAL DISTRICT OF

VS.

NEW LONDON AT NEW LONDON

BEVERLY PLATNER

DECEMBER 24, 2013

PLAINTIFF LYME LAND CONSERVATION TRUST, INC.'S
ANSWER TO DEFENDANT'S
SPECIAL DEFENSES AND COUNTERCLAIMS

ANSWER TO SPECIAL DEFENSES

First Special Defense: The Plaintiff denies all of the allegations in the Defendant's
First Special Defense dated November 18, 2013.

Second Special Defense: The Plaintiff denies all of the allegations in the Defendant's
Second Special Defense dated November 18, 2013.

Third Special Defense: The Plaintiff denies all of the allegations in the Defendant's
Third Special Defense dated November 18, 2013.

Fourth Special Defense: The Plaintiff denies all of the allegations in the Defendant's
Fourth Special Defense dated November 18, 2013.

Fifth Special Defense: The Plaintiff denies all of the allegations in the Defendant's
Fifth Special Defense dated November 18, 2013.

Sixth Special Defense: The Plaintiff denies all of the allegations in the Defendant's

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PALMER, P.C.
Counselors at Law
52 Eugene O'Neill Drive
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Tel. No. (860) 442-0367
Juris Number 65975

Sixth Special Defense dated November 18, 2013.

ANSWER TO COUNTERCLAIMS

First Count:

1. Paragraph 1 is admitted.

2. Paragraph 2 is admitted.

3. Paragraph 3 is admitted.

4. Paragraph 4 is denied.

5. As to the allegations of Paragraph 5, plaintiff does not have sufficient knowledge or information upon which to base a belief, and leaves the defendant to her proof.

6. As to the allegations of Paragraph 6, plaintiff does not have sufficient knowledge or information upon which to base a belief, and leaves the defendant to her proof.

7. As to the allegations of Paragraph 7, plaintiff does not have sufficient knowledge or information upon which to base a belief, and leaves the defendant to her proof.

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8. As to the allegations of Paragraph 8, plaintiff does not have sufficient knowledge or information upon which to base a belief, and leaves the defendant to her proof.

Second Count:

1-3. The answers to Paragraphs 1-3 of the First Count is hereby incorporated by reference as the answers to Paragraphs 1-3 of the Second Count.

4. Paragraph 4 is admitted.

5. Paragraph 5 is denied.

6. As to the allegations of Paragraph 6, plaintiff does not have sufficient knowledge or information upon which to base a belief, and leaves the defendant to her proof.

7. Paragraph 7 is denied, as the document speaks for itself.

8. Paragraph 8 is denied, as the document speaks for itself.

9. As to the allegations of Paragraph 9, plaintiff does not have sufficient knowledge or information upon which to base a belief, and leaves the defendant to her proof.

10. Paragraph 10 is denied.

11. Paragraph 11 is admitted.

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12. As to the allegations of the defendant's claims to preserve her rights in Paragraph 12, plaintiff does not have sufficient knowledge or information upon which to base a belief, and leaves the defendant to her proof.

13. The plaintiff denies the portion of Paragraph 13 regarding the "plaintiff's bullying and interference". As to the remainder of the allegations of Paragraph 13, plaintiff does not have sufficient knowledge or information upon which to base a belief, and leaves the defendant to her proof.

Third Count:

1-3. The answers to Paragraphs 1-3 of the First Count is hereby incorporated by reference as the answers to Paragraphs 1-3 of the Third Count.

4. As to the allegations of Paragraph 4, plaintiff does not have sufficient knowledge or information upon which to base a belief, and leaves the defendant to her proof.

5. Paragraph 5 is denied.

6. Paragraph 6 is denied.

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COUNTERCLAIM DEFENDANT, LYME LAND CONSERVATION
TRUST, INC.'S SPECIAL DEFENSES TO PLAINTIFF, BEVERLY
PLATNER'S FIRST COUNTERCLAIM

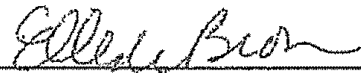
First Special Defense

The counterclaim plaintiff's claims are barred by the doctrines of res judicata and claim preclusion.

Second Special Defense

The counterclaim plaintiff's claims are barred by the statute of limitations.

THE PLAINTIFF

By 
Ellen C. Brown, of
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Its Attorneys

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NO. KNL-CV-09-6001607-S

SUPERIOR COURT

LYME LAND CONSERVATION
TRUST, INC., ET AL.

JUDICIAL DISTRICT OF

VS.

NEW LONDON AT NEW LONDON

BEVERLY PLATNER

JANUARY 7, 2014

**COUNTERCLAIM DEFENDANT, LYME LAND CONSERVATION
TRUST, INC.'S REVISED SPECIAL DEFENSES TO PLAINTIFF, BEVERLY
PLATNER'S FIRST COUNTERCLAIM**

First Special Defense to First Counterclaim

The counterclaim plaintiff's claims are barred by the doctrines of res judicata and claim preclusion.

Second Special Defense to First Counterclaim

The counterclaim plaintiff's claims are barred by the statute of limitations.

THE PLAINTIFF

By Tracy M. Collins
Tracy M. Collins, of
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DOCKET NO.: KNL-CV-09-6001607-S

LYME LAND CONSERVATION	:	SUPERIOR COURT
TRUST, INC., ET AL	:	
<i>Plaintiffs</i>	:	JUDICIAL DISTRICT OF
	:	NEW LONDON
v.	:	
	:	
BEVERLY PLATNER	:	
<i>Defendant</i>	:	JANUARY 8, 2014

**INTERVENING PLAINTIFF'S ANSWER AND SPECIAL DEFENSES TO THE
DEFENDANT'S COUNTERCLAIMS**

The intervening plaintiff, the Attorney General of the State of Connecticut, hereby responds to the defendant's counterclaims.

ANSWER TO COUNTERCLAIMS

Count One

1. The allegations in Paragraph One are admitted.
2. The allegations in Paragraph Two are admitted.
3. Upon information and belief, the allegations in Paragraph Three are admitted.
4. As to the allegations in Paragraph Four, the intervening plaintiff has insufficient knowledge upon which to form an opinion or belief and therefore leaves defendant to her proof.
5. As to the allegations in Paragraph Five, the intervening plaintiff has insufficient knowledge upon which to form an opinion or belief and therefore leaves defendant to her proof.
6. As to the allegations in Paragraph Six, the intervening plaintiff has insufficient knowledge upon which to form an opinion or belief and therefore leaves defendant to her proof.

7. Paragraph Seven states a legal conclusion and does not require a response.

8. Paragraph Eight states a legal conclusion and does not require a response.

Count Two

1-3. The answers to Paragraphs One through Three in Count One are hereby incorporated as the answers to Paragraphs One through Three in Count Two as if more fully set forth herein.

4. The allegations in Paragraph Four are admitted.

5. As to the allegations in Paragraph Five, the intervening plaintiff has insufficient knowledge upon which to form an opinion or belief and therefore leaves defendant to her proof.

6. As to the allegations in Paragraph Six, the intervening plaintiff has insufficient knowledge upon which to form an opinion or belief and therefore leaves defendant to her proof.

7. As to the allegations in Paragraph Seven, the intervening plaintiff admits that section 3.3 of the Conservation Restriction states the following: "The purpose of these restrictive covenants is to assure retention of the premises predominantly in their natural, scenic or open condition and in agricultural, farming, forest and in open space use and to assure competent, conscientious and effective preservation and management in such condition and use. . . ."

8. As to the allegations in Paragraph Eight, the intervening plaintiff admits that the quoted language is listed in Article II, Reservations, of the Conservation Restriction. As to the remaining allegations in Paragraph Eight, the intervening plaintiff has insufficient knowledge upon which to form an opinion or belief and therefore leaves defendant to her proof.

9. As to the allegations in Paragraph Nine, the intervening plaintiff has insufficient knowledge upon which to form an opinion or belief and therefore leaves defendant to her proof.

10. As to the allegations in Paragraph Ten, the intervening plaintiff has insufficient knowledge upon which to form an opinion or belief and therefore leaves defendant to her proof.

11. The allegations in Paragraph 11 are admitted.

12. As to the allegations in Paragraph 12, the intervening plaintiff has insufficient knowledge upon which to form an opinion or belief and therefore leaves defendant to her proof.

13. As to the allegations in Paragraph 13, the intervening plaintiff has insufficient knowledge upon which to form an opinion or belief and therefore leaves defendant to her proof.

Prayer for Relief

Count One

1. Denied in its entirety.

Count Two

1. Deny that a declaratory judgment and its remedy is warranted.

2. a. Admit that the intervening plaintiff will abide by any Court order in this action.

b. Deny that the intervening plaintiff has badgered or bullied the defendant.

3. Denied. Costs are barred by sovereign immunity.

4. Denied.

SPECIAL DEFENSES TO COUNTERCLAIMS

First Special Defense as to Count One

The defendant's counterclaim is barred by the doctrine of res judicata.

Second Special Defense as to Count One

The defendant's counterclaim is barred by the statute of limitations.

ATTORNEY GENERAL
STATE OF CONNECTICUT

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NO: KNL-CV09-6001607-S : SUPERIOR COURT
LYME LAND CONSERVATION TRUST : JUDICIAL DISTRICT
OF NEW LONDON
v. : AT NEW LONDON, CONNECTICUT
BEVERLY PLATNER Et Al : MARCH 12, 2015

DECISION

BEFORE THE HONORABLE JOSEPH Q. KOLETSKY, JUDGE

A P P E A R A N C E S :

Representing the Plaintiff:

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ATTORNEY JOHN F. PRITCHARD
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New York, New York 10036

ATTORNEY TIMOTHY RUSSO
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New York, New York 10036

Representing the State of Connecticut:

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Representing the Defendant:

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Attorney at Law
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ATTORNEY JOHN LAMBERT
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North Haven, Connecticut 06473

ATTORNEY JANET BROOKS
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Recorded & Transcribed by:
Melanie Pearce
Court Recording Monitor
70 Huntington Street
New London, Connecticut 06320

1 THE COURT: The Court is prepared to decide the
2 matter. To spare suspense, judgment enters for the
3 plaintiff and the intervening Attorney General.

4 The Court finds first that Mr. Platner has in
5 effect - although not the defendant in the case - has
6 been in effect the agent of the defendant; by the
7 testimony and by concessions, that Mr. Platner's
8 actions are chargeable to the defendant, Mrs.
9 Platner. What the Court finds is a deliberate
10 violation of the existing restrictions on the
11 property as set forth in Exhibit 8. Sad, in a way,
12 that Mr. Platner, in his own words, simply circled
13 the word mowing as a reservation in the restriction
14 on his wife's property, and with that tunnel vision
15 proceeded to destroy the existing preserved areas on
16 the defendant's property.

17 The easement, the Court finds, is not
18 ambiguous; the easement, the Court finds, is not
19 void. The Court finds not proven that any activity
20 on the property was taken for the purpose of
21 maintaining, creating, or otherwise dealing in any
22 way with sight lines. Rather, the Court finds the
23 intent was to incorporate the restricted area into
24 the unrestricted area for aesthetic purposes as
25 desired by the defendant without regard to those
26 restrictions.

27 Because the violations are so extensive and so

1 apparent, the Court's order is that the property will
2 be restored to the situation that existed when the
3 defendant took title to the property. The Court
4 finds the special defenses not to be proven, and
5 denies the declaratory judgments requested in the
6 counterclaims.

7 The Court sets a hearing, subject to counsel's
8 availability, of a week from Tuesday, the 24th of
9 March, for attorney's fees and for more specificity
10 in the order of restoration of the property. This is
11 not part of the memorandum of decision, but by way of
12 guidance, the Court is extremely concerned with
13 potential additional damage to the wetlands and to
14 the river, creek, and pond by restoration. So, while
15 the simplest way might be simply to cover the grass
16 with black plastic in the protected area for a number
17 of years, I'm not sure that there may not be more
18 effective and efficient ways. And I'll hear from
19 counsel on the 24th, if that works, of March at 10
20 o'clock, and counsel will submit attorney's fees
21 affidavits, and if the defense wishes to examine on
22 those affidavits, that will be available on the 24th
23 of March.

24 I'm not desiring any additional argument; of
25 course, if there's some part of the judgment that is
26 not clear, I'll be happy to entertain requests in
27 that regard.

1 Plaintiff?

2 ATTY. PRITCHARD: No, Your Honor, perfectly
3 clear.

4 THE COURT: Defense?

5 ATTY. LAMBERT: No, Your Honor.

6 THE COURT: Very well. Adjourn court, please.

7 (Recess.)

8 THE COURT: I neglected to add just one
9 paragraph to the decision, and that is that the Court
10 does intend to award the damages - in a multiple to
11 be determined later - as a multiple of the
12 restoration costs, as well as attorney's fees, not as
13 damages. So that will be done on the 24th as well.
14 I just wanted you people to be aware of that.

15 That's it. Thank you very much.

16 ATTY. COLLINS: Your Honor, if I may. I didn't
17 hear you. The damages issue will also be heard on
18 the 24th?

19 THE COURT: The multiple -- well, I'm not sure
20 what the restoration -- I'll hear what you wish to
21 present on that, but we'll see. I have not set the
22 multiple.

23 ATTY. COLLINS: Okay.

24 THE COURT: Of course, I don't know the
25 restoration costs.

26 ATTY. COLLINS: Does Your Honor wish to hear
27 from Mr. Dreyer on that issue?

1 THE COURT: I didn't hear you.

2 ATTY. COLLINS: Does Your Honor wish to be heard
3 from Mr. Dreyer on that issue?

4 THE COURT: No, I don't want any evidence, no.

5 ATTY. COLLINS: Okay, no evidence.

6 THE COURT: No. Well, except if the defense
7 requests vis-à-vis counsel fees, usually there's not
8 a hearing of those. It is available as a matter of
9 right, then would be --

10 ATTY. COLLINS: Correct. We will get them our
11 affidavit.

12 THE COURT: Yes. There was something else on my
13 mind, but it will come back. Oh, I know what it was.
14 I am not now, nor do I ever, give advice on appeals.
15 As I understand it, though, the final judgment is
16 when the counsel fees are set, but I'm not -- Mr.
17 Lambert, that's a weak straw on which to lean. So I
18 don't want to do anything to jeopardize any time
19 limits that are running on the appeal. I do intend
20 to retain jurisdiction over the actual restoration,
21 and that's the end of my judgment.

22

*

*


*

NO: KNL-CV09-6001607-S : SUPERIOR COURT
LYME LAND CONSERVATION TRUST : JUDICIAL DISTRICT
OF NEW LONDON
v. : AT NEW LONDON, CONNECTICUT
BEVERLY PLATNER Et Al : MARCH 12, 2015

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of New London, New London, Connecticut, before the Honorable Joseph Q. Koletsky, Judge, on the 12th day of March, 2015.

Dated this 6th day of May, 2015, in New London,
Connecticut.



Melanie Pearce
Court Recording Monitor

DOCKET NO: KNLCV096001607S

SUPERIOR COURT

ORDER 080571

LYME LAND CONSERVATION TRUST,
INC.

JUDICIAL DISTRICT OF NORWICH/NEW
LONDON

V.
PLATNER, BEVERLY Et Al

AT NEW LONDON

3/12/2015

ORDER

The following order is entered in the above matter:

ORDER:

Judgment enters in favor of Plaintiff and the intervening Attorney General, as stated on the record in open court.

A hearing will be held on Tuesday, March 24, to determine counsel fees and the multiple of restoration costs to be awarded as damages.

The court will retain jurisdiction of the matter throughout the ordered restoration of the property.

080571

Judge: JOSEPH Q KOLETSKY

DOCKET NO: KNLCV096001607S

SUPERIOR COURT

ORDER 080571

LYME LAND CONSERVATION TRUST,
INC.

JUDICIAL DISTRICT OF NORWICH/NEW
LONDON

V.

AT NEW LONDON

PLATNER, BEVERLY Et Al

3/26/2015

ORDER

The following order is entered in the above matter:

ORDER:

Having decided the first portion of this case on March 12, 2015, the court will restate that decision here as well as resolve the outstanding issues concerning counsel fees in accordance with the terms of the restrictive covenant which the defendant has been found to have violated and C.G.S. Section 52-560a(c), as well as the claim for damages under C.G.S. Section 52-560a(d).

As the court found from the bench, the defendant took title to the property in 2007 subject to a declaration of restrictive covenants which by its terms were intended as "conservation restrictions" as defined in C.G.S. Section 47-42a. That restriction was first imposed on the property purchased by defendant by its then owner in 1981. The restriction's purpose, by its terms, is to "assure retention of the premises predominantly in their natural, scenic or open condition...", echoing the statutory definition of a conservation restriction. There is a reservation in the restriction for the property owner, inter alia "to conduct and engage in the cultivation and harvesting of crops, flowers and hay; the planting of trees and shrubs and the mowing of grass; the grazing of livestock; and the construction and maintenance of fences necessary in connection therewith"

The property borders the Connecticut River in the Town of Lyme and also borders Selden Creek and Selden Cove. Aerial photographs depict the property (Exhibits 55 and 56) as it existed about the time the defendants became owners of the property in 2007. It is apparent that the protected areas are quite different from the areas not subject to the restrictions.

The defendant herself testified that she had little to do with the details of the extensive landscaping that was performed on the property, and that her husband was the one primarily responsible for assigning to the various workmen the tasks to be performed on the property. The court finds that her husband, Mr. Brian Platner was acting as the agent of the defendant with respect to the activities performed on the property.

Shortly after the defendant took ownership of the property mowing of the meadow (or field) to the west of the house which was subject to the conservation restriction was begun and the plaintiff made contact with the defendant and her husband to discuss what was to plaintiff a violation of the restriction. By his testimony, Mr. Platner's response to plaintiff's correspondence was to circle the word "mowing" in a copy of the conservation restriction and return it to plaintiff. The most succinct description of Mr. Platner's intent was his testimony on direct examination as follows: in 2007, "we began mowing the fields very, very regularly...by the end of two seasons, the field had turned into what we were looking to get it to turn into, which was primarily grass. And in 2009, at that point, we began working on the grass field to move it into more of a lawn like the lawn behind the house, between the house and the river, to give you a rough description....in 2009 we had a big slice seeding project to, you know, strengthen the turf, and we also expanded the irrigation into that area to support the seeding that we were doing with the slice seeding". The court finds that the defendant's actions were willful and caused great damage to

the protected area's natural condition which the defendant was obligated to retain. As the court said from in its decision from the bench, this "tunnel vision" of the defendant led him to attempt to use some language in a reservation to completely subvert and eviscerate the clear purpose of the conservation restriction. Exhibits 59 through 62 show the property as it looked in 2013 and in particular show the protected area to be now clearly indistinguishable from the unprotected area upon which the house is built.

The court also finds that none of the activity on the property was for the purpose of creating and maintaining views and sight lines from residential property of the defendant.

Much was made at trial by defendant of the fact that the conservation easement itself does not correctly name the plaintiff (Lyme Conservation Trust vice Lyme Land Conservation Trust), in spite of the fact that the deed into defendant refers to the Lyme Land Conservation Trust (Schedule A of defendant's deed). The evidence shows that this was the only land trust in Lyme, and the court holds that this argument is without validity. Similarly, defendant claims that the restriction is unenforceable because it was coerced in 1981 by the Town of Lyme Wetland Enforcement agency. The court finds that this and defendant's other special defenses have not been proved.

As to defendant's claims of ambiguity in the conservation restriction, "words do not become ambiguous simply because lawyers and laymen contend for different meanings", *Downs v. National Casualty Company*, 146 Conn. 490, at 494,5 (1959). Perhaps it is not entirely clear if defendant can be restricted to mowing her fields only once a year or if she can mow them more often, and if that were the only issue in the case the court might undertake some sort of declaratory ruling. Here, though, the violations are so clear that it is unnecessary for the court to do that, since the severity of the violations require an order that the property subject to the conservation restriction be restored to the condition it was in at the time defendant acquired the property.

This order extends to the extensive landscaping of all of the protected area, including (by way of example and not limitation) those portions of the protected areas where literally tons of soil and sand have been placed on the protected areas, to say nothing of the huge amounts of fertilizer used to install this overreaching landscaping project done, as the court has found, willfully.

Based on the forgoing findings the court awards damages under 52-5602(d) of our statutes in the amount of \$350,000.00. The court has taken the evidence that restoration of the field to the west of the residence will take approximately \$100,000.00 to restore, and imposed a multiple of 3.5 to that amount. Since the court (perhaps naively) expects that the defendant will have an interest in seeing that the restoration is carried out in a manner that will not be more burdensome than necessary, it is the order of the court that this damage award be a fixed sum (or if the statute requires a precise multiplier, such a multiplier that will result in damages of \$350,000.00) so that any increased costs that the defendant may wish to bear over what the court will require will not increase the damage amount.

As to counsel fees, defendant has objected to several aspects of the claims for counsel fees, some of which the court agrees with. The court declines to award counsel fees expended in connection with a settled defamation suit about which the court has little information except enough to conclude that those charges cannot reasonably be argued to fit within the authorization for counsel fees in either the statutory language or that of the conservation restriction. Further the court declines to award counsel fees incurred by a pro hac vice attorney prior to that attorney's admission to practice in Connecticut in conjunction with this case, albeit the court otherwise finds those charges to be reasonable.

The court finds nothing improper in Attorney Pritchard's commencing pro hac vice representation on a pro bono basis and mending that agreement with his client to provide for a fee if plaintiff prevailed and was awarded counsel fees.

Connecticut counsel for plaintiff was charging at a discounted rate until the end of 2012, when because of the limited resources of plaintiff, the fee arrangement was changed to a contingency, so that if plaintiff prevailed counsel would receive her usual rate of \$350.00 per hour (which the court finds to be reasonable). Defendant objects to this, arguing that counsels fees "have obviously been increased after

trial", when defendant is actually benefiting from the discounted rate earlier paid by the plaintiff. Indeed, plaintiff might have made the argument that the early billings at the reduced rate should be adjusted upward, but the court would probably not have approved that.

Defendant argues that plaintiff's appearance at an Inland Wetlands hearing to oppose only that portion of plaintiff's application to relocate her driveway insofar as the relocated driveway encroached on the area subject to the conservation restriction, and its appeal from that decision (withdrawn after the driveway was rapidly relocated by defendant) is not fairly included in the authorization for counsel fees in the restriction itself or in the applicable statute. Similarly, defendant argues that fees expended in the early part of this case which was begun as a declaratory judgment action are not an "enforcement action" and therefore not fairly included as counsel fees. Some background is required to properly analyze this claim. From the defendant's purchase of the property in 2007, mowing of fields has increased, but the plaintiff still hoped to resolve the issues between the parties to is case amicably. The declaratory judgment action was commenced in the fall of 2009, before the defendant's application to Inland Wetlands to relocate the driveway, when some amicable resolution could have reasonably been hoped for. After the Wetlands agency's approval of a permit permitting encroachment on the restricted area together with the defendant's increased improper activity on those areas, the plaintiff mended the instant lawsuit to claim the injunctive relief which the court grants today. Thus the court finds that the charges incurred in connection with the Inland Wetlands Commission and the early, declaratory judgment portion of this case are within statutory and conservation restriction authorizations for an award of counsel fees.

The court awards counsel fees of \$115,000.00 for Attorneys Pritchard and Russo, as well as counsel fees of \$185,000.00, for a total award of \$300,000.00 attorneys fees.

It is the court's belief that the date of this judgment begins the time for the running of the period in which to appeal, but if counsel for defendant are concerned about that time expiring earlier the court will grant an extension upon motion properly filed.

The court will retain jurisdiction over this matter, to oversee the implementation of this injunction order. To that end, a hearing is scheduled for Wednesday May 27, 2015 at which the court will hear from the parties as to the specifics of the manner and timing of the restoration of the property and issue further orders in aid of this judgment.

Copies of this order mailed to all counsel of record on 3/26/15

080571

Judge: JOSEPH Q KOLETSKY

DOCKET N^o. KNL-CV-09-6001607-S

LYME LAND CONSERVATION
TRUST, INC., et al.

vs.

PLATNER, BEVERLY

SUPERIOR COURT

JUDICIAL DISTRICT
OF NEW LONDON
AT NEW LONDON

MARCH 30, 2012 [2015]

**DEFENDANT BEVERLY PLATNER'S
MOTION FOR REARGUMENT RE: ORDER NOS. 192.00 & 206.00.**

Pursuant to Practice Book Section 11-11, the defendant, Beverly Platner, hereby moves for reargument of the following orders of the Hon. Joseph Q. Koletsky:

Docket Entry № 192.00, entered March 12, 2015; (Exhibit 1 attached) and

Docket Entry № 206.00, entered March 26, 2015 (Exhibit 3 attached).

Defendant respectfully refers the Court's attention to, and incorporates in this motion, (a) that portion of her Trial Memorandum' [Docket Entry № 181.00] on pages 8 and 9 thereof concerning the court's lack of authority to order restoration of the driveway; and (b) that portion of her Post-Trial Brief [Docket Entry № 193.00] on pages 22 and 23 thereof concerning the court's lack of authority to order her to conduct activities in regulated wetlands; that is, (a) to order her restore her property to, "the situation that existed when the defendant took title to the property." (quote from transcript of the record referred to in Docket Entry № 192.00, entered March 12, 2015 ((Exhibit 2 attached)); or (b) as stated in Docket Entry № 206.00, entered March 26, 2015: "... the property subject to the conservation restriction be restored to the condition it was in at the time defendant acquired the property."

In compliance with the provisions of Practice Book § 11-11, the defendant hereby sets forth the following:

(1) the judgment which is the subject of the motion is set forth as follows:

A) Docket Entry № 192.00, entered March 12, 2015: which begins, as follows:

"Judgment enters in favor of Plaintiff and the intervening Attorney General, as stated on the record in open court." In open court the following was stated:

2

1	the Court's order is that the property will
2	be restored to the situation that existed when the
3	defendant took title to the property.

(from transcript of the record referred to in Docket Entry № 192.00 (Exhibit 2 attached)).

B) Docket Entry № 206.00, entered March 24, 2015: which includes the following: "... the severity of the violations require an order that the property subject to the conservation restriction be restored to the condition it was in at the time defendant acquired the property."

- (2) the decisions which are the subject of this motion are appended hereto.
- (3) The name of the judge who rendered the decision and judgment is the Hon. Joseph Q. Koletsky, Judge Trial Referee.
- (4) The specific grounds upon which defendant relies for this motion are that the court has erred as a matter of law in ordering the defendant to restore the "protected area" to a condition that requires a permit from an agency over which the court has no jurisdiction, which agency may choose not to issue the permit or which may issue a permit for a different condition than ordered or via different methods, as more fully explained and set forth, as follows:

- A) Restoration would occur entirely within regulated wetlands* which requires either,
 - (i) a permit from the local wetlands agency, or
 - (ii) a determination by the local wetlands agency that the proposed restoration is, either "as of right" under CGS § 22a-40 (a) or "nonregulated" under CGS § 22a-40 (b).*

* Plaintiff has known this since 1981: By letter dated September 18, 1981, Fredrik Holth, the wetlands agency chair, wrote to Arthur Howe, the plaintiff land trust's president, saying, "I should add, of course, that the Conservation Commission retains jurisdiction on the entire site despite the grant of the covenants" Ex. T-4, 3rd ¶.

- B) The local wetlands agency is not a party and the court has no jurisdiction over the local wetlands agency to require it to issue any permit whatsoever.
- C) In deciding whether to issue a permit for activities within wetlands, the local wetlands agency must consider whether a feasible and prudent alternative exists to the restoration ordered and should not issue a permit if there are feasible and prudent alternatives to the proposed regulated activity which have less adverse impact on wetlands.
CGS § 22a-41(a)(2).
- D) The evidence plaintiff introduced concerning “restoration of the field” did not include any evidence concerning whether there were feasible and prudent alternatives which would have less adverse impact on wetlands and therefore, the court does not have any basis whatsoever to conclude that a permit for the restoration will be issued by the local wetlands agency (and *even if there were such evidence*, the provisions of Inland Wetlands and Watercourses Act (CGS §§ 22a-36 to 22a-45, inclusive) give the entire initial authority for making such determinations, to the local wetlands agency. Pursuant to CGS § 22a-42(c), the local wetlands agency “is the sole agent for licensing of *regulated activities*”, not to the superior court. *Aaron v. Conservation Commission*, 183 Conn. 532, 552 (1981). ⁵In other words, even if the court believes that the restoration plaintiff proposed is the best plan, it cannot direct the local wetlands agency to adopt its belief. Moreover, the court in remarks from the bench on March 12, 2015 the court expressed its concern “with potential ... damage to the wetlands ... by restoration.” The “potential damage to the wetlands by restoration” is a concern bestowed by statute upon the local agency, which, if it shares the court’s concern, *may well refuse to allow the restoration* envisioned by the plaintiff or its expert.*
- E) The ordered restoration seems to unlawfully preclude the defendant from exercising reserved rights under, ¶ 2.2 of the Declaration of Restrictive Covenants,
- “[t]o conduct and engage in the cultivation and harvesting of crops, flowers and hay; the planting of trees and shrubs and the mowing of grass; the grazing of livestock” or under ¶ 2.3 of the Declaration:
- “The cultivation and harvesting of forest products in accordance with sound non-commercial forestry practices.”

* Plaintiff’s expert’s estimate of the cost of restoration failed to consider alternatives that the wetlands agency is required to consider (including “do less” or “do nothing” alternatives), making it an inappropriate measure of such costs.

It is axiomatic that the court cannot order the defendant to violate the Inland Wetlands and Watercourses Act and equally clear that the court cannot presently order the local wetlands agency to issue the defendant a permit for "restoration".

A motion to reargue is proper to address ... claims of law that the movant claimed were not addressed by the court. *Opoku v. Grant*, 63 Conn. App. 686, 692 (2001).

WHEREFORE, said defendant hereby moves, pursuant to Practice Book § 11-11, to reargue the court's judgment as set forth above and requests the court to reconsider its judgment and decision and to issue an order that,

- (a) does not require the defendant to undertake any work not authorized by the wetlands agency of the town of Lyme, Connecticut; and
- (b) does allow her to exercise all the rights reserved to her in the Declaration of Restrictive Covenants.

DEFENDANT BEVERLY PLATNER

By: 

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DOCKET NO: KNLCV096001607S

SUPERIOR COURT

ORDER 080571

LYME LAND CONSERVATION TRUST,
INC.

JUDICIAL DISTRICT OF NORWICH/NEW
LONDON

V.

AT NEW LONDON

PLATNER, BEVERLY Et Al

4/14/2015

ORDER

ORDER REGARDING:
03/31/2015 208.00 MOTION TO REARGUE/RECONSIDER

The foregoing, having been considered by the Court, is hereby:

ORDER: DENIED

The court has held that it has the power to issue the order that it entered.

The court is still of that opinion.

The motion to reargue is denied

Judicial Notice (JDNO) was sent regarding this order.

080571

Judge: JOSEPH Q KOLETSKY

DOCKET N^o KNL-CV-09-6001607-S

LYME LAND CONSERVATION
TRUST, INC., et al.

vs.

PLATNER, BEVERLY

SUPERIOR COURT

JUDICIAL DISTRICT
OF NEW LONDON
AT NEW LONDON

APRIL 15, 2015

DEFENDANT BEVERLY PLATNER'S
MOTION FOR REARGUMENT RE: ORDER N^o 206.00.

Pursuant to Practice Book Section 11-11, the defendant, Beverly Platner, hereby moves for reargument of the order entered March 26, 2015 by the Hon. Joseph Q. Koletsky and referred to on the Docket as Entry : N^o 206.00,; (Exhibit 1 attached).

Defendant respectfully refers the Court's attention to, and incorporates herein,

1. Plaintiff's original "Application for Declaratory Judgment" [Entry N^o 100.31];
2. "Plaintiff's First Amended Application for Declaratory Judgment" [Entry N^o 106.00],
3. "Defendant's Request to Revise" [Entry N^o 110.00] to which plaintiff did not object and with which plaintiff failed to comply;
4. "Plaintiff's Request for Leave to Amend Complaint" dated October 13, 2010 which sought to, "withdraw its Declaratory Judgment against the defendants Joseph G. Standart III, Clinton S. Standart and Beverly Platner" and "Plaintiff's Amended Complaint" dated October 13, 2010 [Entry N^o 111.00];
5. Defendant's "Objection Per P.B. §§ 10-60(b) and 10-37(a) to Plaintiff's Request to Amend Complaint (without first having complied with the Request to Revise)" [Entry N^o 112.00] which amended complaint stated an entirely new claim (that apparently arose after filing of the original application for declaratory judgment).

In compliance with the provisions of Practice Book § 11-11, the defendant hereby sets forth the following:

THIS MOTION IS A PRACTICE BOOK §11-11 MOTION.
ARGUMENT IS REQUESTED TESTIMONY IS NOT REQUIRED

- (1) the judgment which is the subject of the motion is set forth as follows:

Docket Entry № 206.00, entered March 26, 2015: which includes the following:

“ ... the court awards damages under 52-5602(d) [sic] of our statutes in the amount of \$350,000.00. The court has taken the evidence that restoration of the field to the west [sic] of the residence will take approximately \$100,000.00 to restore, and imposed a multiple of 3.5 to that amount..., it is the order of the court that this damage award be a fixed sum (or if the statute requires a precise multiplier, such a multiplier that will result in damages of \$350,000.00).” (Order, pg. 2, fifth full ¶) and

“...the court finds that the charges incurred in connection with the Inland Wetlands Commission and the early declaratory judgment portion of this case are within statutory and conservation restriction authorizations for an award of counsel fees.” (Order, pg. 3, end of first full ¶.)

- (2) the decision which is the subject of this motion is appended hereto.
- (3) The name of the judge who rendered the decision and judgment is the **Hon. Joseph Q. Koletsky**, Judge Trial Referee.
- (4) A motion for reargument may be used where the movant claims that claims of law were not addressed by the court. *K. A. Thompson Electric Co. v. Wesco, Inc.*, 24 Conn. App. 758, 760 (1991). The specific grounds upon which defendant relies for this motion are that the court improperly,

(a) applied CGS §52-560a(d) in awarding \$350,000 damages and

(b) awarded attorney’s fees unconnected to the enforcement of the conservation restriction.

(A) With respect to damages, CGS §52-560a(d) requires the court to consider,

- “the extent of damage done to natural resources, if any,
- “the appraised value of any trees or shrubs cut, damaged, or carried away as determined in accordance with the latest revision of The Guide for Plant Appraisal ..., [&]
- “any economic gain realized by the violator”

Plaintiff, however, failed to introduce any evidence of those required considerations.

Moreover, the court, not only did not have evidence of the required considerations, it (a) created a fixed sum with little or no consideration as to the restoration that may or may not be allowed and credited, as evidence, a “guess” that does not amount to the “reasonable certainty” required by Connecticut law for the assessment of damages: See, e.g.,

“When damages are claimed, they are an essential element of the plaintiff’s proof and must be proved with reasonable certainty. . . . Damages are recoverable only to the extent that the evidence affords a sufficient basis for estimating their amount in money with reasonable certainty.” (Citations omitted; internal quotation marks omitted.)

Argentinis v. Fortuna, supra, 134 Conn. App. 538, 549 (2012). The plaintiff’s expert did not even have a “plan” for restoration all the protected area and to the extent there was an objective at all, it called for creation of a field that was not what existed prior to Mrs. Platner’s acquisition of the land. As previously argued, the availability of alternatives with less impact on the wetlands than the restoration proposed by the plaintiff’s expert (and the lack of evidence of the cost of those alternatives) makes any assessment of damages improperly speculative. The plaintiff in its Motion to Bifurcate Trial [Entry № 187.00] aptly recognized that the cost of restoration could not be determined (without even acknowledging the obvious and central role that the local wetlands agency plays in determining what the cost and proper methods of restoration would be). Plaintiff withdrew its motion [Entry № 189.00] and the court is forced to rely upon a guess about the cost of a plan that lacks any reasonable certainty of even being approved by the local wetlands agency.

The court’s insistence that the “multiplier” be whatever will result in damages of \$350,000.00” is backwards of what the legislature enacted (which requires that the restoration costs be proven with reasonable certainty and a multiplier of up to five times be applied to the cost).

- (B) With respect to attorneys’ fees awarded concerning,
- (i) the application and amended application seeking a declaratory judgment; and
 - (ii) the administrative appeal plaintiff,
 - (a) took from the wetlands agency (exhibit J-15; docket # KNL-CV-106004258); &
 - (b) withdrew on January 24, 2011 (exhibit J-16);

It is important to note that the prayer for relief in the pleadings [Entry № 100.31] and [Entry № 106.00] did not seek attorney's fees. Those pleadings were also directed towards other parties (Joseph G. Standart III and Clinton S. Standart) as well as Mrs. Platner. Moreover, the pleadings and prayer for relief seeking a declaratory judgment were *specifically* withdrawn (although not in accordance with the provisions of the Practice Book)

"It is still the law that the right of a plaintiff to recover is limited by the allegations of the complaint; and any judgment should conform to the pleadings, the issues and the prayers for relief." (Citations and internal quotation marks omitted). *Kawasaki Kisen Kaisha, Ltd. v. Indomar, Ltd.* 173 Conn. 269, 272 (1977); *H & L Chevrolet, Ins. Co. v. Berkeley Ins. Co.* 110 Conn. App. 428, 433 n.2 (2008). An earlier expression of the rule was that, "[a]ny judgment, to be adequate as such, must respond to the prayers for relief." *Morici v. Jarvie*, 137 Conn. 97, 103 (1950). It has always been the case that one cannot obtain relief that was not asked for.

Here, the operative pleadings do not seek attorney's fees incurred in the actions it withdrew.

The court's award of attorney's fee for the period preceding the October 2010 commencement of an enforcement action is a *non sequitur*. Paragraph 3.6 of the Declaration of Restrictive Covenants provides that attorney fees can be awarded to a prevailing party in an action "to enforce the covenant" obliging the defendant to pay the "reasonable attorneys' fees of the plaintiff therein" (not for attorney's fees *preceding* the action or for attorney's fees in an administrative appeal outside the action or for related-but-withdrawn actions).

Indeed, there is no statutory basis in Connecticut for awarding attorney's fees on an administrative appeal from a local wetlands agency under CGS § 22a-43. Plaintiff not only voluntarily abandoned those efforts but never even proved that it was aggrieved or that the local wetlands agency's decision was incorrect.*

* Indeed, the wetlands agency's decision that CGS § 47-42d (b) simply did not apply to Mrs. Platner's application was vindicated by the legislature's enactment of P.A. 10-85, which amended subsection (b) of § 47-42d to change the law prospectively (but not retroactively) and make it apply in the way plaintiff wished it had originally been written.

There is no basis in Connecticut law to allow for the award of attorney's fees for claims plaintiff neither pursued nor vindicated.

WHEREFORE, said defendant hereby moves, pursuant to Practice Book § 11-11, to reargue the court's judgment as set forth above and requests the court to reconsider its judgment and decision and to issue an order that,

- (a) with respect to damages complies with the evidence and with §CGS 52-560a(d); and
- (b) with respect to attorney's fees, complies with the provisions of the conservation restriction and/or CGS § 52-560a(c).

DEFENDANT BEVERLY PLATNER

By: 

John R. Lambert, her attorney
25 Trumbull Place, North Haven CT 06473
Juris number 101328
T: 203-234-8121 F: 203-234-8123
email: johnrlambert@gmail.com

Exhibit 1 Docket Entry #206.00; Order entered 3/26/15

DOCKET NO: KNLCV096001607S

SUPERIOR COURT

ORDER 080571

LYME LAND CONSERVATION TRUST,
INC.

JUDICIAL DISTRICT OF NORWICH/NEW
LONDON

V.

AT NEW LONDON

PLATNER, BEVERLY Et Al

3/26/2015

ORDER

The following order is entered in the above matter:

ORDER:

Having decided the first portion of this case on March 12, 2015, the court will restate that decision here as well as resolve the outstanding issues concerning counsel fees in accordance with the terms of the restrictive covenant which the defendant has been found to have violated and C.G.S. Section 52-560a(c), as well as the claim for damages under C.G.S. Section 52-560a(d).

As the court found from the bench, the defendant took title to the property in 2007 subject to a declaration of restrictive covenants which by its terms were intended as "conservation restrictions" as defined in C.G.S. Section 47-42a. That restriction was first imposed on the property purchased by defendant by its then owner in 1981. The restriction's purpose, by its terms, is to "assure retention of the premises predominantly in their natural, scenic or open condition...", echoing the statutory definition of a conservation restriction. There is a reservation in the restriction for the property owner, inter alia "to conduct and engage in the cultivation and harvesting of crops, flowers and hay; the planting of trees and shrubs and the mowing of grass; the grazing of livestock; and the construction and maintenance of fences necessary in connection therewith"

The property borders the Connecticut River in the Town of Lyme and also borders Selden Creek and Selden Cove. Aerial photographs depict the property (Exhibits 55 and 56) as it existed about the time the defendants became owners of the property in 2007. It is apparent that the protected areas are quite different from the areas not subject to the restrictions.

The defendant herself testified that she had little to do with the details of the extensive landscaping that was performed on the property, and that her husband was the one primarily responsible for assigning to the various workmen the tasks to be performed on the property. The court finds that her husband, Mr. Brian Platner was acting as the agent of the defendant with respect to the activities performed on the property.

Shortly after the defendant took ownership of the property mowing of the meadow (or field) to the west of the house which was subject to the conservation restriction was begun and the plaintiff made contact with the defendant and her husband to discuss what was to plaintiff a violation of the restriction. By his testimony, Mr. Platner's response to plaintiff's correspondence was to circle the word "mowing" in a copy of the conservation restriction and return it to plaintiff. The most succinct description of Mr. Platner's intent was his testimony on direct examination as follows: in 2007, "we began mowing the fields very, very regularly...by the end of two seasons, the field had turned into what we were looking to get it to turn into, which was primarily grass. And in 2009, at that point, we began working on the grass field to move it into more of a lawn like the lawn behind the house, between the house and the river, to give you a rough description...in 2009 we had a big slice seeding project to, you know, strengthen the turf, and we also expanded the irrigation into that area to support the seeding that we were doing with the slice seeding". The court finds that the defendant's actions were willful and caused great damage to

KNLCV096001607S 3/26/2015

Page 1 of 3

the protected area's natural condition which the defendant was obligated to retain. As the court said from in its decision from the bench, this "tunnel vision" of the defendant led him to attempt to use some language in a reservation to completely subvert and eviscerate the clear purpose of the conservation restriction. Exhibits 59 through 62 show the property as it looked in 2013 and in particular show the protected area to be now clearly indistinguishable from the unprotected area upon which the house is built.

The court also finds that none of the activity on the property was for the purpose of creating and maintaining views and sight lines from residential property of the defendant.

Much was made at trial by defendant of the fact that the conservation easement itself does not correctly name the plaintiff (Lyne Conservation Trust vice Lyne Land Conservation Trust), in spite of the fact that the deed into defendant refers to the Lyne Land Conservation Trust (Schedule A of defendant's deed). The evidence shows that this was the only land trust in Lyne, and the court holds that this argument is without validity. Similarly, defendant claims that the restriction is unenforceable because it was coerced in 1981 by the Town of Lyne Wetland Enforcement agency. The court finds that this and defendant's other special defenses have not been proved.

As to defendant's claims of ambiguity in the conservation restriction, "words do not become ambiguous simply because lawyers and laymen contend for different meanings", *Downs v. National Casualty Company*, 146 Conn. 490, at 494, 5 (1959). Perhaps it is not entirely clear if defendant can be restricted to mowing her fields only once a year or if she can mow them more often, and if that were the only issue in the case the court might undertake some sort of declaratory ruling. Here, though, the violations are so clear that it is unnecessary for the court to do that, since the severity of the violations require an order that the property subject to the conservation restriction be restored to the condition it was in at the time defendant acquired the property.

This order extends to the extensive landscaping of all of the protected area, including (by way of example and not limitation) those portions of the protected areas where literally tons of soil and sand have been placed on the protected areas, to say nothing of the huge amounts of fertilizer used to install this overreaching landscaping project done, as the court has found, willfully.

Based on the foregoing findings the court awards damages under 52-5602(d) of our statutes in the amount of \$350,000.00. The court has taken the evidence that restoration of the field to the west of the residence will take approximately \$100,000.00 to restore, and imposed a multiple of 3.5 to that amount. Since the court (perhaps naively) expects that the defendant will have an interest in seeing that the restoration is carried out in a manner that will not be more burdensome than necessary, it is the order of the court that this damage award be a fixed sum (or if the statute requires a precise multiplier, such a multiplier that will result in damages of \$350,000.00) so that any increased costs that the defendant may wish to bear over what the court will require will not increase the damage amount.

As to counsel fees, defendant has objected to several aspects of the claims for counsel fees, some of which the court agrees with. The court declines to award counsel fees expended in connection with a settled defamation suit about which the court has little information except enough to conclude that those charges cannot reasonably be argued to fit within the authorization for counsel fees in either the statutory language or that of the conservation restriction. Further the court declines to award counsel fees incurred by a pro hac vice attorney prior to that attorney's admission to practice in Connecticut in conjunction with this case, albeit the court otherwise finds those charges to be reasonable.

The court finds nothing improper in Attorney Pritchard's commencing pro hac vice representation on a pro bono basis and mending that agreement with his client to provide for a fee if plaintiff prevailed and was awarded counsel fees.

Connecticut counsel for plaintiff was charging at a discounted rate until the end of 2012, when because of the limited resources of plaintiff, the fee arrangement was changed to a contingency, so that if plaintiff prevailed counsel would receive her usual rate of \$350.00 per hour (which the court finds to be reasonable). Defendant objects to this, arguing that counsel's fees "have obviously been increased after

trial", when defendant is actually benefiting from the discounted rate earlier paid by the plaintiff. Indeed, plaintiff might have made the argument that the early billings at the reduced rate should be adjusted upward, but the court would probably not have approved that.

Defendant argues that plaintiff's appearance at an Inland Wetlands hearing to oppose only that portion of plaintiff's application to relocate her driveway insofar as the relocated driveway encroached on the area subject to the conservation restriction, and its appeal from that decision (withdrawn after the driveway was rapidly relocated by defendant) is not fairly included in the authorization for counsel fees in the restriction itself or in the applicable statute. Similarly, defendant argues that fees expended in the early part of this case which was begun as a declaratory judgment action are not an "enforcement action" and therefore not fairly included as counsel fees. Some background is required to properly analyze this claim. From the defendant's purchase of the property in 2007, mowing of fields has increased, but the plaintiff still hoped to resolve the issues between the parties to its case amicably. The declaratory judgment action was commenced in the fall of 2009, before the defendant's application to Inland Wetlands to relocate the driveway, when some amicable resolution could have reasonably been hoped for. After the Wetlands agency's approval of a permit permitting encroachment on the restricted area together with the defendant's increased improper activity on those areas, the plaintiff mended the instant lawsuit to claim the injunctive relief which the court grants today. Thus the court finds that the charges incurred in connection with the Inland Wetlands Commission and the early, declaratory judgment portion of this case are within statutory and conservation restriction authorizations for an award of counsel fees.

The court awards counsel fees of \$115,000.00 for Attorneys Pritchard and Russo, as well as counsel fees of \$185,000.00, for a total award of \$300,000.00 attorneys fees.

It is the court's belief that the date of this judgment begins the time for the running of the period in which to appeal, but if counsel for defendant are concerned about that time expiring earlier the court will grant an extension upon motion properly filed.

The court will retain jurisdiction over this matter, to oversee the implementation of this injunction order. To that end, a hearing is scheduled for Wednesday May 27, 2015 at which the court will hear from the parties as to the specifics of the manner and timing of the restoration of the property and issue further orders in aid of this judgment.

Copies of this order mailed to all counsel of record on 3/26/15

080571

Judge: JOSEPH Q KOLETSKY

DOCKET NO: KNLCV096001607S

SUPERIOR COURT

ORDER 080571

LYME LAND CONSERVATION TRUST,
INC.
V.
PLATNER, BEVERLY Et Al

JUDICIAL DISTRICT OF NORWICH/NEW
LONDON
AT NEW LONDON

7/16/2015

ORDER

ORDER REGARDING:
04/15/2015 210.00 MOTION TO REARGUE/RECONSIDER

The foregoing, having been considered by the Court, is hereby:

ORDER: DENIED

Short Calendar Results Automated Mailing (SCRAM) Notice was sent on the underlying motion.

080571

Judge: JOSEPH Q KOLETSKY
Processed by: Timothy Furman

DOCKET NO: KNLCV096001607S

LYME LAND CONSERVATION TRUST,
INC.
V.
PLATNER, BEVERLY Et Al

SUPERIOR COURT

JUDICIAL DISTRICT OF NORWICH/NEW
LONDON
AT NEW LONDON

ORDER 080571

7/16/2015

ORDER

ORDER REGARDING:
04/24/2015 211.00 OBJECTION TO MOTION

The foregoing, having been considered by the Court, is hereby:

ORDER: SUSTAINED

Short Calendar Results Automated Mailing (SCRAM) Notice was sent on the underlying motion.

080571

Judge: JOSEPH Q KOLETSKY
Processed by: Timothy Furman

DOCKET NO: KNLCV096001607S

LYME LAND CONSERVATION TRUST,
INC.
V.
PLATNER, BEVERLY Et Al

SUPERIOR COURT

JUDICIAL DISTRICT OF NORWICH/NEW
LONDON
AT NEW LONDON

ORDER 080571

6/9/2015

ORDER

ORDER REGARDING:
05/21/2015 213.00 MOTION FOR STAY

All Counsel Present.

The foregoing, having been heard by the Court, is hereby:

ORDER:

When the court entered its judgment on March 26, it contemplated that the hearing it scheduled for May 27 would result in more specific orders as to the mandatory order for restoration of the property, as well as "issue further orders in aid of this judgment"

That hearing will be rescheduled when the court hears from counsel as to dates on which witnesses will be available.

In the meantime, the motion for stay of the mandatory injunction for restoration of the property is granted. The motion for stay of the prohibitory injunction is denied.

Judicial Notice (JDNO) was sent regarding this order.

080571

Judge: JOSEPH Q KOLETSKY
Processed by: Timothy Furman

DOCKET NO: KNLCV096001607S

SUPERIOR COURT

ORDER 080571

LYME LAND CONSERVATION TRUST,
INC.

JUDICIAL DISTRICT OF NORWICH/NEW
LONDON

V.

AT NEW LONDON

PLATNER, BEVERLY Et Al

7/17/2015

ORDER

The following order is entered in the above matter:

ORDER:

When the court issued its written decision of March 26, it restated and expanded its oral decision of March 12, after hearing further from the parties on the issue of counsel fees since that oral decision was rendered. In that written decision the court set a date in May for further proceedings with respect to the specifics of the injunctive relief ordered by the court on March 26 in general terms. Defendant filed an appeal, and before the scheduled date asked the clerk's office if they should appear and were advised not to because of the pending appeal. The court was not apprised of this and was a little surprised when no one showed up for the scheduled hearing, but counsel were in no manner at fault in any way. This week, the court finally held two days of evidentiary hearings on the precise nature of the injunctive relief ordered in March and the subject of the pending appeal.

For purposes of this injunction, the court will deal with the restricted portion in three parts, since the parties treated the property in that manner.

As to the fields subject to the conservation restriction, the court is not inclined to order the bulldozing of the recently installed turf supporting the ornamental lawn with a golf-course style sprinkler system. Rather the court will order that portion to be planted with "plugs" or similar devices to restore the lawn to a natural state that will not require chemicals to be placed upon these wetlands. To that end, the parties are ordered to submit planting plans for the fields within three weeks and the court will issue further specifics as to this part of the injunction. Defendant is ordered to stake out the boundary between the restricted and unrestricted portions of her property. The irrigation system installed in the restricted portion of defendant's property should properly be removed, but that will cause more damage than good. Defendant is ordered to remove the heads from said system, and not utilize portions of the irrigation system to water the restricted area. The "tree rings" in the restricted area are to be removed. Removal of the encroachment of defendant's driveway upon the restricted area may not be necessary if the parties, as they suggested they were interested in doing, can agree upon a method of substituting other land for the encroached land. Therefore the court will make no order at this time, recognizing that all of these mandatory orders have been stayed during the course of the appeal.

As to the woodlands located in the protected area, defendant has destroyed considerable vegetation over the last few years, well beyond any exercise of a reserved right for "mowing of grass" for the simple reason that there was no grass, but rather considerable and diverse vegetation. This is not to say that some of the selective removal of invasive species was in violation of the conservation restriction. Rather the defendant's "threw the baby out with the bath water", in a manner of speaking. The court orders that all mowing and landscaping activity be discontinued to permit the woodland areas subject to the conservation restriction to return to their earlier natural condition. Some selective removal of invasive species on a plant by plant basis will be permitted but not on the wholesale level of activity performed prior. This is a prohibitory injunction and not stayed by the court decision on defendant's request for stay. Future plantings by defendant in the woodlands will be approved on a case by case basis during the

restoration period.

As to the restricted area on the Connecticut river side of the defendant's house, an area extending 150 feet from the high water line of the river easterly toward the house, the artificial beach created by defendant in the restricted area is ordered to be remediated, and the logs installed in that area are to be removed.

With respect to the motion for clarification, on which the court heard argument at the same time it heard argument on the specifics of the injunctive order, much of the preceeding should be of assistance to counsel, but regardless of what the defendant "considers" to be enjoined, the court's order is not intended to permit the defendant to "maintain" her blatant disregard of the conservation restriction. The court has stayed the effect of the mandatory actions to be required of the defendant, but enjoins the defendant from continuing the activity previously engaged in, including the application of chemicals of any sort during the pendency of this appeal, the planting of any additional landscaping, mowing in the woodland, and mowing the field beyond a single mowing at this time.

Koletsky, JTR

Judicial Notice (JDNO) was sent regarding this order.

080571

Judge: JOSEPH Q KOLETSKY
Processed by: Timothy Furman

DOCKET N^o: KNL-CV-09-6001607-S

LYME LAND CONSERVATION
TRUST, INC., et al.

vs.

PLATNER, BEVERLY

SUPERIOR COURT

JUDICIAL DISTRICT
OF NEW LONDON
AT NEW LONDON

AUGUST 6,, 2015

**DEFENDANT BEVERLY PLATNER'S
MOTION FOR REARGUMENT RE: ORDER N^o. 225.00.**

Pursuant to Practice Book Section 11-11, the defendant, Beverly Platner, hereby moves for reargument of the order of the Hon. Joseph Q. Koletsky designated Docket Entry N^o 225.00, entered July 17, 2015; (Exhibit 1 attached). In compliance with the provisions of Practice Book § 11-11, the defendant hereby sets forth the following:

(A) The judgment or decision which is the subject of this motion: On July 17, 2015, the Court made the following decision, inter alia:

1. The Court ordered that the fields subject to the conservation restriction "be planted...to restore the lawn to a natural state."
2. The Court ordered that the "tree rings" in the restricted area are to be removed.
3. The Court found that with respect to the wooded area "the Defendant has destroyed considerable vegetation over the last few years, well beyond any exercise of a reserved right for mowing of grass, for the simple reason that there was no grass, but rather considerable and diverse vegetation." The Court found that with respect to an otherwise permissible attempt to remove harmful invasive species from the property, the Defendant "threw the baby out with the bath water."

THIS MOTION IS A PRACTICE BOOK §11-11 MOTION.
ARGUMENT IS REQUESTED TESTIMONY IS NOT REQUIRED

4. The court ordered all mowing and landscaping activity to be discontinued to permit the woodland areas subject to the conservation restriction to return to their “earlier natural condition.”
5. The court ordered the “artificial beach created by defendant” be remediated, and the logs installed in that area to be removed.

The decision and order which is the subject of the motion is set forth in Exhibit 1 attached.

- (B) The name of the judge who rendered the decision and judgment is the Hon. Joseph Q. Koletsky, Judge Trial Referee.
- (C) The specific grounds upon which defendant relies for this motion are that,
- (i) the court has no evidence for its finding that “there was no grass” in the woods (that Mrs Platner could mow);
 - (ii) its “restoration” order is an impermissible “creation” order because,
 - (a) there is no factual basis that, in 2007, the vegetation that the court seeks to be established existed in anything approximating that which is being ordered and
 - (b) in limiting the mowing to one time it ignores not only that the “mowing reservation” in the Declaration never limited frequency or height (and was broadly interpreted by plaintiff to allow mowing of all and any vegetation, including woody growth); and
 - (c) all of the evidence is that the lawn in 2007 was not in a “natural state” at all (but rather in a state created by centuries of mowing and agricultural use (and at the time a state created by twice annual mowing chosen by the previous owner not dictated by the Declaration; and, similarly,
 - (d) there was no evidence that the woods were in anything approaching a “natural condition”
 - (iii) there is no factual basis for it finding that the plaintiff created an artificial beach.
 - (iv) the prohibitory injunction is overbroad and improper.

STANDARD FOR REARGUMENT:

The purpose of reargument is ... to demonstrate to the court that there is a decision or principle of law which should have controlling effect, and which has been overlooked and/or there has been a misapprehension or incorrect understanding of the facts presented.

Opuki v. Grant, 63 Conn. App. 686 (2001).

ARGUMENT:

I. The trial court has misapprehended or has an incorrect understanding of the facts presented on the record.

A. The field cannot be restored to a "natural" condition.

At the outset of the trial of this matter, with respect to its consideration of the evidence being presented by the Plaintiff, the Court stated:

" ...So it is relevant, the Court rules, that the prior condition of the property before the defendant got it was "A". Then, if the property is different, according to the evidence, there is a logical and reasonable inference that the Court may draw that the change to the property occurred during the ownership of the defendant."

TRANSCRIPT MARCH 3, 2014 PAGE 78 LINE 8-14.

To prosecute its case, the Plaintiff presented the court with twenty-six photographs purporting to be certain areas of the Defendant's property, and two photographs of the property of Joseph Standart, who owns an abutting property. Standart's property is also encumbered by the same declaration of restrictive covenants, granted by the same grantor, as that which the Defendant's property is encumbered. (See Exhibit 2 attached and made a part hereto "Summary of Plaintiff's Photographic Evidence"). The Plaintiff also called eight

witnesses, Mrs. Lawrence, Mr. Novak, Mr. Grace, Mr. Moore, Mr. and Mrs. Platner, Mr. Garcia, and Mr. Dreyer.

None of the witnesses called by the Plaintiff presented any first hand testimony, or had any idea of what species, genre or category of vegetation, trees, grass, sands or soils were present, exactly where present on the restricted area of the Defendant's property as of May 7, 2007 or on any date before the Defendant owned the property.

Mr. Grace, the Defendant's licensed plant health specialist, testified that the field was "basically coarse grass" at the time he began to work for the Defendant. Transcript March 4, Page 85, Line 13. Mr. Platner testified that the field was dominated by "junky crabgrass, weedy, stickly, ivy-filled or poison ivy-filled grass." Transcript, March 5, Page 72, Lines 16-17.

Mr. Dreyer, the Plaintiff's expert presented his educated opinion of what he thinks or supposes might have been present in general, based on a study of aerial photographs and topographical maps found on the internet, but readily admitted that he could not testify knowingly as to what was there (see testimony below).

In fact, at the end of the Plaintiff's case, it was only one oblique-angled aerial photograph Exhibit 55 that was accepted into the record, (over objection) purporting to suggest what the property "looked like" in "2007":

THE COURT: Does the photograph accurately depict the property as it existed when you owned it?

MRS. LAWRENCE: Yes it does.
TRANSCRIPT MARCH 3, 2015 PAGE 69 LINES 26-27 PAGE 70 LINES 1-2.

ATTORNEY PRITCHARD: Does this photograph accurately depict the condition of the property at the time you sold it to Mrs. Platner?

MRS. LAWRENCE: Yes it does.
TRANSCRIPT MARCH 3, 2015 PAGE 70 LINES 17-20.

ATTORNEY BROOKS:Do you know the date of this photograph?

MRS. LAWRENCE: Yes, it's listed here. It's 2007, the same year that we sold the property.

ATTORNEY BROOKS: Do you know the date the photograph was taken?

MRS. LAWRENCE: No, I do not know the date, but I can tell it's in the wintertime.

ATTORNEY BROOKS: And were you present with -- did you take this photograph?

MRS. LAWRENCE: I did not.

ATTORNEY BROOKS: Were you present when this photograph was taken?

MRS. LAWRENCE: I was not.

ATTORNEY BROOKS: Do you have personal knowledge of the conditions on the date the photographer took this photograph?

MRS. LAWRENCE: I don't know exactly the day, no.

ATTORNEY BROOKS: Do you have personal knowledge of the conditions when the photographer took the picture?

MRS. LAWRENCE: I do not...

TRANSCRIPT MARCH 3, 2015 PAGE 71 LINES 5-23.

ATTORNEY COLLINS: MR. DREYER, DOES THIS (Exhibi 55) LOOK LIKE THE PLATNER PROPERTY IN 2007—LATE 2006, I SHOULD SAY, OR EARLY 2007?

GLENN DREYER: WELL, THERE'S A DATE OF 2007 ON THE IMAGE. I WASN'T THERE, SO I WOULDN'T KNOW EXACTLY WHAT IT LOOKED LIKE.

TRANSCRIPT MARCH 9, 2015 PAGE 58 LIES 26-27 PAGE 59 LINES 1-2 .

GLENN DREYER: SO IT APPEARS TO BE RECENT -- PROBABLY RECENTLY MOWED. YOU CAN SEE THE LINES THAT INDICATE MOWING THROUGH THE FIELD. THERE ARE SUBTLE --THE FIELD IS BROWN. IT'S A DORMANT TIME OF YEAR. THE VEGETATION IS DORMANT AND THE TOPS ARE DEAD, AND YOU

CAN SEE SUBTLE VARIATIONS IN COLOR IN THE FIELD THAT WOULD INDICATE DIFFERENT KINDS OF PLANTS GROWING IN DIFFERENT LOCATIONS..
TRANSCRIPT MARCH 9, 2015 PAGE 58 LINES 26-27 PAGE 60 LINES 1-4.

The photograph at Exhibit 55 does not establish the conditions in 2007. The photograph was purportedly authenticated as depicting an aerial view of the site at 66 Selden Road, Lyme, CT by Mrs. Lawrence, one of its owners, but she clearly was guided by the hearsay marking by Microsoft Corporation on the photograph when she declared it to be representative of 2007 conditions. When cross-examined, she properly examined the photograph and concluded it was taken in the winter/dormant season where no vegetation was identifiable on the trees or the ground. This was repeated when Mr. Dreyer was directed to Exhibit 55, where he also declared it to be taken during a dormant season where "the tops are dead." In addition, during the restoration hearing on July 15, the Defendant's expert, Mr. Klein, illustrated with Defendant's Exhibit JJ, that photographs taken from the internet are copyrighted by their search engine owners during the year of publication. Defendant's Exhibit JJ with a copyrighted date of 2015 is identical to Plaintiff's Exhibit 55, with a copyrighted date stamped as 2007. No witness can competently testify what date this image was taken, and this image therefore, cannot and should not form the basis for a) determination of the Defendant's activities; or b) determination of to what exact conditions the property should be restored (other than in a dormant/winter season).

Without Exhibits 55 and JJ, there is no photographic evidence of the property's look, aesthetic or any other evidence of what species were present at which location prior to the Defendant's ownership. There is no "A", as the Court, in its initial ruling was looking for. As such, there is no basis to hold the Defendant in contempt for the conduct on the property. But more importantly for the purposes of this motion, there is no evidence supporting the court's order as to the remediation plan. Absent evidence supporting the necessity for the plan and the means by which the plan will return the property to the condition it was in on the

date of purchase, not to what the Plaintiff would have liked the property to have been, the remediation plan cannot stand. Further, absent evidence that the extra measures being required of the Defendant are for the sole purpose of returning the property to the 2007 condition, rather than improving on the 2007 condition, there is no basis in the Declaration for such an order. The Declaration does not require that the Defendant improve the property.

The only credible evidence of the species present in July 2015 at the Defendant's property was presented by the Defendant's experts at the restoration hearing. The experts, botanists and soil scientists, inventoried the species now present, and concluded that, based on the soils present and based on the mowing schedule described by Mrs. Lawrence, the former owner, the field in 2007, would have been dominated by these same dominant species, mostly, non-native, cool season grasses. All of the experts called during the trial and restoration hearing agreed that a mowed field was never natural, since the mowing stops the natural re-growth of woody species. Mr. Klein specifically stated that the field, based on the conditions he observed, and based on Mrs. Lawrence's mowing schedule, would not have been dominated by native species or warm-season grasses. Mr. Klein testified that the field, left untreated by herbicides from March to July 2015, had already reverted to dominance by the species most likely present in 2007.

**B. Without evidentiary support, the court's orders regarding
"restoration" are essentially a "creation" plan.**

During his testimony the Plaintiff's expert, Mr. Dreyer, admitted that 1) the Defendant's site was never natural, since there was in the past and there is today always a level of desirable management; 2) the Defendant's field was probably filled with both native and non-native vegetation prior to the Defendant's ownership; and 3) that his recommendations with respect to the field areas were not "restoration" but rather an attempt to "create" a desirable condition, a purely "native" field with "native grasses" and absent

exotic invasive species, based upon the particular understood desired values and sensitivities of the Plaintiff and its members:

TRANSCRIPT MARCH 9, 2015; PAGE 99 LINES 24-27:

ATTORNEY BROOKS: DO YOU HAVE AN OPINION AS TO WHETHER THERE WERE EXOTIC INVASIVE SPECIES IN 2007 AND PRIOR TO THAT TIME IN THE RESTRICTED AREA ON 66 SELDEN ROAD?

GLENN DREYER: I THINK IT'S VERY LIKELY THERE WERE.

TRANSCRIPT MARCH 9, 2015, PAGE 99, LINES 5-6

ATTORNEY BROOKS: SO YOUR RESTORATION PLAN DOESN'T PROVIDE FOR NON-NATIVE PLANTS AND SHRUBS, DOES IT?

GLENN DREYER: NOT IF I WAS DOING IT, IT WOULDN'T.

TRANSCRIPT MARCH 9, 2015 PAGE 99 LINES 12-14:

ATTORNEY BROOKS: SO IS YOUR PLAN ACTUALLY A CREATION PLAN? YOU'RE CREATING A NATIVE PLANT PLANNING PLAN?

GLENN DREYER: I SUPPOSE YOU COULD SAY THAT.

TRANSCRIPT MARCH 9, 2015 PAGE 84 LINES 7-19:

ATTORNEY COLLINS: HOW WOULD YOU MAINTAIN THIS DURING THE FIRST YEAR OF REMEDIATION?

GLENN DREYER: SO DURING THE FIRST YEAR, YOU'D NEED TO MOW PROBABLY ABOUT ON A MONTHLY BASIS AT A HEIGHT OF APPROXIMATELY SIX INCHES, BECAUSE IN ADDITION TO THE PLANTS THAT WERE PUT DOWN ON PURPOSE BY SEED, YOU WOULD – I WOULD EXPECT THERE ALSO TO BE MANY WEEDS COMING UP, UNDESIRABLE PLANTS WHICH – MANY OF WHICH WOULD BE ANNUALS THAT WOULD GROW QUICKLY, AND YOU WANT TO PREVENT THOSE

During the restoration hearing, both Mr. Klein and Mr. Dreyer discussed "desirable" "native" "forbs" plants and species, trying to match various and sundry botanical species to the particular growing challenges of the field, which is also a wetlands site. But this site is Defendant's private property, and Defendant's desire was and is currently that the vegetation present in the fields should be soft, cool season grasses and shrubs, both of which she has an absolute right to cultivate, and neither of which are restricted under the Declaration of Restrictive Covenants. Consistent with Mr. Dreyer's own recommendations regarding mowing, the Defendant managed her mowing to prevent "undesirable" weeds.

It is undisputed in the evidence that the Defendant's contractors did not take action to destroy vegetation present in the field in 2007. The Platners mowed (which is a reserved right without any language limiting the frequency or height). In 2009 their contractors added rye grass and shrubs, consistent with the owner's desires, and not inconsistent with a "natural" or "open" or "scenic" result. In fact, the Defendant's expert, Mr. Klein testified that, notwithstanding the single 2009 event of slice seeded "rye" seeds used by Mr. Novak in the field, the Defendant's property today has abundant, various species present due to the natural and unavoidable occurrence of blowing annual seeds into the area. Ms. Throckmorton, provided photographs of the property for which she was the photographer and about which she testified in detail. These photographs were dated by the witness as July 2014 (Defendant's Exhibits R1-R-17).¹ Ms. Throckmorton disputed the contention that the field area was an unnatural monoculture in 2014:

ATTORNEY BROOKS: ARE ANY OF THE THINGS THAT YOU SAID THAT YOU OBSERVED EXAMPLES OF BROAD LEAVED HERBACEOUS MATERIAL?

KATHERINE THROCKMORTON: I SAW BROAD LEAF HERBACEOUS MATERIAL IN THE FIELD.

TRANSCRIPT MARCH 9, 2015 PAGE 122 LINES 4-10

¹ These photographs are contrasted with the Plaintiff's Exhibits 59-73 which are undated by any of the witnesses through whom they were "authenticated."

Based on the evidence in the record, a new “creation” planting plan of newly introduced “plugs” of ardently desired (by the Plaintiff) “native” plants, creates an undue burden on the Defendant to cultivate and succeed with these newly introduced plants, for which there is no evidence that they existed prior to Defendant’s ownership, are untested at the site, and which may or may not survive in the conditions presented in the future, further exposing the Defendant to continued burden and exposure to further expense, punishment and sanctions if these “plugs” don’t succeed for whatever reason. This creation plan also is inconsistent with the expert testimony which concluded that these “native” plants likely were not dominant in 2007, and that the Defendant’s property, through the elimination of herbicides, had most likely already re- introduced the species likely to have been present in 2007.

All of the evidence points to the inescapable conclusion that the “field” existing in 2007 was not a “natural condition” at all. Even Mr. Dreyer conceded that the natural state of the restricted area is a deciduous forest and that the an open field requires human beings to mow it (or burn it or otherwise prevent a forest from establishing itself). Mrs. Lawrence mowed the area between her house and the river every ten days and the large open area northeast of the house twice a year. Mr. Selden testified that it had been farmed by his family since the late 1600s and into the 20th century. Mr. Klein—based on his knowledge of alluvial floodplains of the lower Connecticut River Valley and on over 80 years of aerial photographic evidence-- testified that condition of the land in 2007 was not “natural” at all but the result of agriculture and the introduction of non native vegetation.

The Declaration calls for the “Protected Areas” to be kept in their “predominantly in their natural, scenic or open condition. The defendant most certainly kept them “open” and “scenic” (or at least the Court has not found otherwise) so it is more than passing strange that the “restoration” order requires the premises to be put into an unnatural condition that has never before existed (at least according to the evidence introduced).

Moreover, there is nothing in the Declaration which permits the Plaintiff to require the Defendant to alter the property so that it would include plants or natural features which weren't already there. Requiring the Defendant to act beyond the scope and obligations of the Declaration is not legally permitted. Unless there is clear evidence that the "native" plants were there and so the remediation plan is simply replacing them, the remediation plan constitutes an improper requirement on the Defendant to act beyond the language and obligations of the Declaration.

The finding by the court is inconsistent with the evidence at trial and with the language of the Declaration.

C. The facts do not support the court's finding that the Defendant's activities in the woodlands "threw the baby out with the bathwater" or that "there was no grass" (in the woods).

The trial record revealed that there was 5.5 acres of wooded area south of the Defendant's house. At least one acre of this area is unrestricted or not "protected", where the Defendant can do any activity she wants if permitted by the Town and state law. The trial record has FOUR photographs of the woodlands near the Defendant's home. One exhibit (Exhibit 79) was authenticated by the Plaintiff's witness, George Moore. Mr. Moore could not be certain exactly where the photograph at Exhibit 79 was taken (he was not the photographer).

ATTORNEY PRITCHARD: Did you observe the scene reflected in this photograph during the course of your walk?

GEORGE MOORE: I HONESTLY CAN'T BE CERTAIN. I MEAN, I ACCOMPANIED THEM, BUT I COULDN'T POINT TO THE MAP AND SAY THIS WAS THERE.

ATTORNEY PRITCHARD: DID YOU WALK THROUGH THE FORESTED AREA OF MRS. PLATNER'S PROPERTY SOUTH OF THE HOUSE DURING THE COURSE OF YOUR VISIT?

GEORGE MOORE: YES.

ATTORNEY PRITCHARD: AND WAS—DOES THIS PHOTOGRAPH FAIRLY REPRESENT THE FLORA AND FAUNA, GENERALLY SPEAKING, OF THE FOREST ON THAT DATE?

**GEORGE MOORE: IN CERTAIN PLACES, YES.
Transcript MARCH 4, 2007, Page 161, Lines 10-17.**

Exhibit 78 was admitted by agreement of the parties, and Exhibits 80 and 81 were authenticated by Defendant's husband, Brian Platner. Mr. Platner testified that Exhibit 78 depicted a barn which was located in the UNRESTRICTED woods area of the property. Transcript, March 5, Pages 134, Lines 1-2. As to Exhibits 80 and 81, Mr. Platner could not tell whether these images depicted the unrestricted or restricted part of the wooded area.

Again, there is no "A", as the court was seeking on the first day of trial. There is a dearth of evidence to suggest that the image in Exhibit 79 represents the five acres of woodland at the Defendant's site. The only witness to testify about this photo, Mr. Moore, to his credit, testified that this image was not necessarily representative of the entire wooded area in the restricted woods. He also clearly stated he did not know where in the woods this photograph was taken.

So it is not evident that Exhibits 78, 80 or 81 are the AFTER shots to the BEFORE suggested by Exhibit 79. None of these three photos are dated by any witness, except that Mr. Platner did note that Exhibit 78 depicted construction activity and was the area where a barn was erected AFTER the photo was taken.

It is more plausible to suggest that Exhibit 81 is an AFTER image of the section of unrestricted woods depicted in Exhibit 78. At least those two photos have some similarity in structure of the wooded area.

Much has been made of the difference in the understory between Exhibits 79 and 80. But this was explained by the Defendant's expert, Mr. Snarski:

ATTORNEY BROOKS: Subsequent to the removal of the invasives pursuant to this plan, have any plants populated themselves in that area where the invasive species were removed?

RICHARD SNARSKI: Yes.

ATTORNEY BROOKS: Can you identify some of those plants?

RICHARD SNARSKI: I can't --- I haven't been back there..except this fall, I did go back....A year ago, an exotic invasive grass species, Japanese stiltgrass, has invaded the drier portion of the wooded wetland. It's a very aggressive grass species.

ATTORNEY BROOKS: What effect does the growth of Japanese stiltgrass have on the re-vegetation with other species in that area?

RICHARD SNARSKI: When it's very aggressive, it can limit the natural native species to recolonize there—not all of them, but it will limit the native species from coming back on their own.

Transcript March 10, Page 74, Lines 14-27, Page 75, Lines 1-4.

ATTORNEY BROOKS: How would you describe the understory, what it looked like after these exotic invasive species were removed? What would you describe it as?

RICHARD SNARSKI: It was open. The multiflora rose and Japanese barberry was quite abundant in areas, taking up the majority of the understory, so once they were eradicated --- as well as the Morrow's honeysuckle. Once they were eradicated, the understory was kind of open, because they were the dominant understory woody vegetation plants at that time.

Transcript March 10 Page 75 Lines 15-24.

According to Mr. Snarski, it is plausible to conclude that the understory would not flourish back to its September 2007 (Exhibit 79) status, due to the eruption of the new invasive, Japanese Stiltgrass. The regime for eliminating this invasive was presented as mowing, so the court's order preventing all mowing is contraindicated by the Plaintiff's own expert, Mr. Dreyer, who testified that mowing was desirable for invasive control.

ATTORNEY COLLINS: WOULD YOUR RECOMMENDATION INCLUDE TO PROHIBIT MOWING IN THE FOREST EVER?

GLENN DREYER: I THINK THERE COULD BE SOME MOWING – NOT GENERAL MOWING, BUT SOME PLACES MIGHT NEED TO BE MOWED, PERHAPS, FOR INVASIVE CONTROL, I SUPPOSE.

TRANSCRIPT MARCH 9, 2015 PAGE 86 LINES 12-16.

The court made much of Exhibit 79 (and seems to use that as the basis of its finding that “there was no grass”) in the woods. That photo seem to show vegetation that would be classified a “grass” by a botanist (and the court has no testimony of any botanist that “there was no grass.”) But far more important is the finding ignores the common meaning of the word “grass” since time immemorial.

Over six hundred years ago Chaucer's Squire spoke of the lady who,

“shall likewise *know every grass that has roots*, and whom it will
heal, regardless of how deep and gaping the wounds might be.”*

But one needn't go back to ancient texts to see how the court erred; every English dictionary, whether from England or America supports the Platner's belief that there was grass in the woods and that they had a right to mow it. See Exhibit 2 attached for examples. In the first dicionary of the Yale's own Noah Webster defined grass as follows:

* And every gras that growth upon roote, She shal eek knowe, and whom it wol do boote, Al be his wounds never so depe aand wyde”

“In common usage, herbage; the plants which constitute the food of cattle and other beasts.”
N. WEBSTER, AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (1828). There is nothing to suggest that the vegetation depicted in Exhibit 79 is anything other than that which would serve as “the food of cattle and other beasts.”

The *current* edition of the THE AMERICAN HERITAGE® DICTIONARY OF THE ENGLISH LANGUAGE defines grass to mean,

“An expanse of ground, such as a lawn, covered with *grass or similar plants*.”

The first meaning mentioned in the most comprehensive American dictionary ever published defined grass as follows:

1. In general, herbage; the plants on which cattle and other beast feed or pasture; the verdurous covering of the soil. In popular use the name is applied to a great variety of plants which are in no way related to grasses technically so called.”

CENTURY DICTIONARY AND CYCLOPEDIA (1914).

Yes, indeed. The vegetation depicted in Exhibit 79 is “the verdurous covering of the soil” and might well include “a great variety of plants which are in no way related to grasses technically so called.” Alfalfa and clover are “legumes” but commonly understood as “grass.” Surely it is common ground that people consider the dandelions or daisies that infest their lawns to be part of the grass (and mow them)



No native speaker of American English would read the sign at upper left to mean “but it’s OK to walk on the flowers” (because they are clearly *part* and parcel of the grass) and

similarly no native speaker of American English would read the sign at upper right to interpret the invitation as forbidding people to picnic amongst the flowers in it (again, because the non-grasses are clearly a *part* of the grass). And just *how* would a person practically manage to “mow” so carefully and discriminatingly as to avoid damage to all the “the verdurous covering of the soil” including tree seedlings, wild onions, violets and the like?

Moreover, the plaintiff’s own actions *for more than three decades* supports the idea that everything in the field could be considered to be “grass” by the Platners. Mrs Lawrence testified that she mowed brushy vegetation at least twice a year (and Messrs. Dreyer and Klein agreed that they would expect to find brushy growth such as mutliflora rose and other woody growth in the field).

The photographic evidence shows that Mr. Standart’s adjacent land within the restricted area was allowed to become quite brushy and that the plaintiff itself appeared before the local wetlands agency not to seek permission limited to mow just “grass” beneath the trees there but mainly to cut the brush the Standarts had allowed to take over. Nothing in the evidence suggested that the Standart land was, in 1981, part of the “woodland” mentioned in the Declaration or that the brush-hogging had anything to do with “beneficial and selective non-commercial forestry practices.” No, the evidence simply shows that the type of “verdurous covering of the soil” the Platners found growing in their woodland was grass that they can mow.

D. There was no evidence to establish that the Defendant created an “artificial beach” which must be remediated. The expert testimony at the restoration hearing indicated that the Selden Point riverfront in 2015 would have undergone complete change from any condition found in 2007 due to erosion over 8 years and other factors.

The testimony of Mrs. Lawrence, the former owner of the Defendant's property made it very clear that a "beach" was a major feature of the property, including a "dunes" area:

ATTORNEY BROOKS: ... From your knowledge of the site, would you describe what the beach was or looked like?

MRS. LAWRENCE: It was a lovely, sandy beach, and there were dunes. And the dunes, the sand extended into the property for about—maybe ten, 15 meters, and then came the lawn.

TRANSCRIPT - MARCH 3, 2015 PAGE 88 LINES 20-24:

ATTORNEY BROOKS: ...Along the Connecticut River, how long did the beach stretch?

MRS. LAWRENCE: Well, the beach stretched all along the front of the property and around into the creek for maybe ten meters or so.

TRANSCRIPT - MARCH 3, 2015 PAGE 89 LINES 12-16:

Mrs. Lawrence's description of the "dunes" is consistent with Plaintiff's Exhibit 84, which shows an area jutting into the lawn (10 meters = 32 feet 15 meters = 49 feet). Brian Platner also testified that this dunes area was above the high water line at the edge of the shore with respect to Exhibit 85:

BRIAN PLATNER: ..YOU CAN KIND OF SEE WERE THERE'S A STEEP INCLINE UP IN THE SAND, AND IF YOU LOOK BACKWARDS BEHIND WHATEVER THAT GUY IS IN THE PHOTO ...THERE'S A TREE LEANING OVER, AND THIS IS KIND OF REPRESENTATIVE IN A LOT OF PLACES ON THE PROPERTY WHERE THERE'S A

STEEP JUMP UP IN THE LAND... AND SO THE HIGH TIDE TENDS TO WASH UP
AGAINST THAT DIRT WALL OR SANDY WALL.

Transcript March 5, Page 75, Lines 20-27

With no factual basis, the Plaintiff accuses the Defendant of “dumping” 22.5 tons of sand on the beach area. As noted, there is no evidence this ever occurred. Mr. Novak, using his 2007 invoice to refresh his recollection of work 8 years in the past, testified that the sand he billed to the Defendant was used to back-fill a walkway around the house:

ATTORNEY PRITCHARD: Did you put 22.5 tons of sand or thereabouts on the beach and spread the sand?

BRANDON NOVAK: No., it says back filled bluestone walkway.
TRANSCRIPT – MARCH 3, 2015 LINES 21—23.

THE COURT: Your biggest truck is five tons, right? Five yards?

BRANDON NOVAK: Yes.

THE COURT: Okay. And what is the weight of your biggest truck?

BRANDON NOVAK: About a ton per yard, roughly.

THE COURT: Okay. So we’re talking, if your trucks are three to five yards, therefore —

BRANDON NOVAK: Yes, five trucks.

THE COURT: To backfill the world’s longest bluestone driveway —

BRANDON NOVAK: Yes.

THE COURT: --it’s going to take five truck loads of sand.

BRANDON NOVAK: You could use a lot more than five loads of whatever when you're building stuff.

THE COURT: So you're telling me that you could use that much to backfill a driveway as opposed to filling the beach.

BRANDON NOVAK: Yes, if not less or more. Yes.

TRANSCRIPT – MARCH 3, 2015 Page 197 LINES 16-27 Page 198 LINES 1-15:

The Novak testimony was supported in the restoration hearing by Mr. Klein, who testified that 22.5 tons of sand, while seeming to be a lot of sand to a lay person, is really *de minimis* in the context of a construction project, and also *de minimis* and unlikely to cover any area to create a beach where none existed before. (Sand weighs 96 pounds per cubic foot. 45,000 pounds of sand would only be useful to fill 500 cubic feet). Mr. Klein estimated that 22.5 tons would only provide between ¼ and ½ inch of sand cover, very unlikely to completely cover the "beach" area the Plaintiff accuses the Defendant of creating.

The Plaintiff provided a single invoice notation that 22.5 tons of sand was delivered to the defendant. That invoice, however, is an insufficient basis for the court to conclude that the Defendant created an artificial beach. Notwithstanding this testimony, and in light of an invoice stating that Novak's labor was to back fill a walkway at a 200 foot long residence, the Plaintiff insists the sand went elsewhere. But they have no evidence to support that assertion. Even if the court disbelieves the witnesses and the evidence about the use of the sand, the court cannot conclude the opposite. "A trier of fact is free to reject testimony even if it is uncontradicted...and is equally free to reject part of the testimony of a witness even if other parts have been found credible...It is axiomatic however, that, in rejecting such testimony, a fact finder is not free to conclude that the opposite is true." State vs. Fernandez, 76 Conn. App. 183, 191 (2003)

Because no artificial beach was created, the restoration order, to "remediate" said "created" beach is impossible to achieve. The removal of any amount of sand from the shoreline area would necessarily involve state and federal agencies, who would be completely

opposed to any removal of sand, which is a protective barrier against erosion of the already eroding shoreline. Since the Defendant's ownership, there have been two major hurricanes and untold many storms. The Defendant, owning property on the shoreline must make every effort, beyond her responsibilities under the Declaration, to prevent erosion which is a very real danger to her valuable residential property.²

Moreover, ordering the Defendant to remove sand from the beach, in light of the only evidence that the sand was not placed on the beach, would require the Defendant to act contrary to requirements of the Declaration. The court should not require a prohibited act of the Defendant absent clear evidence that it is necessary. There is no such evidence and the Declaration itself does not support any plan to alter the beach otherwise.

II. The Court has misinterpreted the Declaration.

A. The court finds mowing of "grasses" and non-grass vegetation as prohibited under the Declaration, but the neighbor Mr. Standart mows down all woody vegetation on his land covered by the very same Declaration of Restrictive Covenants as that of the Defendant. Mr. Standart's destruction of woody vegetation is not only permitted, but encouraged and facilitated by the Plaintiff.

At trial Mr. Moore, the executive director of the Plaintiff corporation, confirmed that the Defendant's abutter, Mr. Standart was permitted, in 2014, to mow down all of his vegetation on his property, which property is entirely restricted under the same language as the Defendant. Mr. Standart's woody vegetation is visible in Plaintiff's Exhibits 68, 90 and 91. Necessarily, if the Plaintiff is allowing one conduct under the Declaration on one property and prohibiting it on another, then the Declaration is ambiguous and cannot form the basis of

² The court notes the "150" feet designation on the Gates Map, Exhibit 9. However this map was dated in 1981, and the expert testimony was that significant erosion from the last 34 years would have shrunk the "restricted" area measured from the 1981 high water line. The unrestricted area would be unchanged.

a contempt finding or orders consistent with the same. The Plaintiff, having taken contrary positions on the handling of such areas, cannot now claim contemptuous conduct, and the court should not have found it.

Further, no expert from the Plaintiff would define the vegetation in these photograph as "grass". Mr. Novak identified it as woody shrubs:

ATTORNEY MENDOZA: Can you describe, with respect to the Standarts' property, what it looked like last year? What did the Standart's property look like?

BRANDON NOVAK: IT JUST GOT MOWED.

THE COURT: I just didn't hear what you said, if you could possibly repeat what you said.

BRANDON NOVAK: The Standart's property just was recently mowed down after about five years.

TRANSCRIPT MARCH 4, 2015 PAGE 54 LINES 7-17:

ATTORNEY MENDOZA: Was there woody brush there?

BRANDON NOVAK: Yes.

TRANSCRIPT MARCH 4, 2015 PAGE 55 LINES 7-19

The Defendant did not destroy any woody brush (other than the invasive species approved by the plaintiff and the local wetlands agency), and Mr. Snarski testified that no woody plants were destroyed in the woods at the Defendant's premises. In addition, Defendant's Exhibit Q-6, a letter from the Plaintiff's attorney to the Defendant in 2008, lauded the management of the wooded area. It is inexplicable how, with the record as it currently stands, the Defendant is successfully accused of destroying woody vegetation

(somewhere undetermined), and the neighbor, subject to the same document of restrictions, is lauded and encouraged for mowing down woody vegetation.

B. The Defendant's application of fertilizer to the restricted area was done as of right, not prohibited by the Declaration, and was supervised by the State-run Agricultural Station. The prohibition of fertilizer will cause damage to the shrubs and flowers the Defendant has expended huge sums to cultivate, and this damage is not recoverable.

The Defendant's plant health specialist, Mr. Grace is a licensed "ornamental turf" specialist:

ATTORNEY PRITCHARD: What is ornamental turf?

PAUL GRACE: Ornamentals are shrubbery and turf is grass.
TRANSCRIPT MARCH 5, 2015 PAGE 82 LINES 16-17:

ATTORNEY PRITCHARD: Are any aspects of the services that you performed on the ---Mrs. Platner's property required to be reported to the DEP?

PAUL GRACE: YES.
TRANSCRIPT MARCH 4, 2015 PAGE 101 LINES 21-23:

ATTORNEY MENDOZA: Do you perform soil testing on the Platner property?

PAUL GRACE: YES

ATTORNEY MENDOZA: HOW OFTEN?

PAUL GRACE: AT LEAST ONCE OR TWICE A YEAR.
TRANSCRIPT MARCH 4, 2015 PAGE 111 LINES 22-25:

ATTORNEY MENDOZA: WHEN YOU CONSULT WITH THE AGRICULTURAL STATION, DO THEY MAKE RECOMMENDATIONS TO YOU?

PAUL GRACE: THEY DO.

ATTORNEY MENDOZA: AND DO YOU FOLLOW THOSE RECOMMENDATIONS?

PAUL GRACE: I WOULD SAY YES, BUT I MODIFY THEM.

ATTORNEY MENDOZA: AND WHAT KIND OF RECOMMENDATIONS DO THEY MAKE?

PAUL GRACE: THEY MAKE --- YOU KNOW, THEY'LL SAY APPLY THIS MUCH NITROGEN PER 1,000 SQUARE FEET OR THIS MUCH LIME PER 1,000 SQUARE FEET.

ATTORNEY MENDOZA: BASED ON THE RESULTS OF THE SOIL TEST?

PAUL GRACE: EXACTLY.

TRANSCRIPT MARCH 4, 2015 PAGE 112 LINES 15-25:

Mr. Grace testified that the fertilizer applied was chosen to stem the pre-emergent seeds that would emerge into weeds. Once this regimen is completed, the weeds would no longer interfere and compete with the species of grasses and shrubs chosen by the Defendant to grow on her private property. Mr. Grace also outlined that the later season application would prevent snow molds and funguses that were endemic to the wetlands fields of which the Defendant's was typical. Since all of this activity was conducted under the auspices of the USDA agricultural station and is not restricted by the Declaration, the prohibition of the nutrients needed by the shrubs and plants the Defendant has expended vast sums to cultivate will cause the Defendant losses that are not recoverable

III. The Court's prohibitory was improper and vitiates the Defendant's rights under the Declaration.

Defendant hereby incorporates by reference the arguments made by Wesley Horton at the hearing on the first post-judgment motion; that is that our statutes and the Practice Book contemplate an automatic stay of of relief pending appeal except for,

- (a) mandatory injunctions (when and if the court makes certain findings) and even then a stay is presumed; and
- (b) prohibitory injunctions *except* where a preliminary injunction had been in place prior to trial.

Here, the plaintiffs did neither sought nor obtained a preliminary injunction prohibiting any particular activity or action by Mrs. Platner. When Judgement was entered on March 12 there was not any prohibitory injunction nor was any prohibitory injunction made on March 26. Therefore there should not be any prohibitory injunction put in place more than four months after judgment was issued from the bench on March 12.

The Court has ordered,

- that all mowing and landscaping activity be discontinued to permit the woodland areas subject to the conservation restriction to return to their earlier natural condition.
- future plantings by defendant in the woodlands will be approved on a case by case basis during the restoration period
- the defendant not to continuing the activity previously engaged in, including the application of chemicals of any sort, the planting of any additional landscaping, mowing in the woodland, and mowing the field beyond a single mowing at this time.

By all accounts there is invasive grass now throughout the woodland perhaps as a result of the removal of the other invasive species and yet even what is classified botanically as grass cannot be mowed.

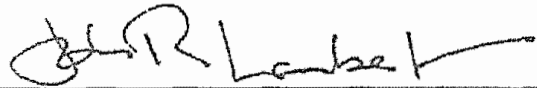
The court's finding of bad conduct in the woodlands is most disturbing. The record shows that Mrs. Platner (1) added native shrubs (See Exhibit G3, Anne Penniman Plan of

Planting dated 8/25/2009), (2) removed invasive species with the blessing of the plaintiff and (3) mowed the grassy groundcover. The woodland was not in a "natural condition" to begin with. The record shows that, along with stacked driftwood, there was trash and the previous owner had removed wildlife (beavers) and the trees the wildlife had felled or nearly felled. The control the court has asserted is excessive and neither called for nor allowed

CONCLUSION

For the above-stated reasons, the Defendant respectfully requests that the findings and orders dated July 17, 2015 be reargued.

THE DEFENDANT, BEVERLY PLATNER



BY: John Lambert, her attorney
25 Trumbull Place
North Haven, CT 06473
(203) 234-8121

EXHIBIT 1

Post-Judgment
ORDER OF JULY 17, 2015
EXHIBIT 1

DOCKET NO: KNLCV096001607S

SUPERIOR COURT

LYME LAND CONSERVATION TRUST,
INC.JUDICIAL DISTRICT OF NORWICH/NEW
LONDONV.
PLATNER, BEVERLY Et Al

AT NEW LONDON

7/17/2015

ORDER

The following order is entered in the above matter:

ORDER:

When the court issued its written decision of March 26, it restated and expanded its oral decision of March 12, after hearing further from the parties on the issue of counsel fees since that oral decision was rendered. In that written decision the court set a date in May for further proceedings with respect to the specifics of the injunctive relief ordered by the court on March 26 in general terms. Defendant filed an appeal, and before the scheduled date asked the clerk's office if they should appear and were advised not to because of the pending appeal. The court was not apprised of this and was a little surprised when no one showed up for the scheduled hearing, but counsel were in no manner at fault in any way. This week, the court finally held two days of evidentiary hearings on the precise nature of the injunctive relief ordered in March and the subject of the pending appeal.

For purposes of this injunction, the court will deal with the restricted portion in three parts, since the parties treated the property in that manner.

As to the fields subject to the conservation restriction, the court is not inclined to order the bulldozing of the recently installed turf supporting the ornamental lawn with a golf-course style sprinkler system. Rather the court will order that portion to be planted with "plugs" or similar devices to restore the lawn to a natural state that will not require chemicals to be placed upon these wetlands. To that end, the parties are ordered to submit planting plans for the fields within three weeks and the court will issue further specifics as to this part of the injunction. Defendant is ordered to stake out the boundary between the restricted and unrestricted portions of her property. The irrigation system installed in the restricted portion of defendant's property should properly be removed, but that will cause more damage than good. Defendant is ordered to remove the heads from said system, and not utilize portions of the irrigation system to water the restricted area. The "tree rings" in the restricted area are to be removed. Removal of the encroachment of defendant's driveway upon the restricted area may not be necessary if the parties, as they suggested they were interested in doing, can agree upon a method of substituting other land for the encroached land. Therefore the court will make no order at this time, recognizing that all of these mandatory orders have been stayed during the course of the appeal.

As to the woodlands located in the protected area, defendant has destroyed considerable vegetation over the last few years, well beyond any exercise of a reserved right for "mowing of grass" for the simple reason that there was no grass, but rather considerable and diverse vegetation. This is not to say that some of the selective removal of invasive species was in violation of the conservation restriction. Rather the defendant's "threw the baby out with the bath water", in a manner of speaking. The court orders that all mowing and landscaping activity be discontinued to permit the woodland areas subject to the conservation restriction to return to their earlier natural condition. Some selective removal of invasive species on a plant by plant basis will be permitted but not on the wholesale level of activity performed prior. This is a prohibitory injunction and not stayed by the court decision on defendant's request for stay. Future plantings by defendant in the woodlands will be approved on a case by case basis during the

KNLCV096001607S 7/17/2015

Page 1 of 2

restoration period.

As to the restricted area on the Connecticut river side of the defendant's house, an area extending 150 feet from the high water line of the river easterly toward the house, the artificial beach created by defendant in the restricted area is ordered to be remediated, and the logs installed in that area are to be removed.

With respect to the motion for clarification, on which the court heard argument at the same time it heard argument on the specifics of the injunctive order, much of the preceeding should be of assistance to counsel, but regardless of what the defendant "considers" to be enjoined, the court's order is not intended to permit the defendant to "maintain" her blatant disregard of the conservation restriction. The court has stayed the effect of the mandatory actions to be required of the defendant, but enjoins the defendant from continuing the activity previously engaged in, including the application of chemicals of any sort during the pendency of this appeal, the planting of any additional landscaping, mowing in the woodland, and mowing the field beyond a single mowing at this time.

Koletsky, JTR

Judicial Notice (JDNO) was sent regarding this order.

080571

Judge: JOSEPH Q KOLETSKY
Processed by: Timothy Furman

EXHIBIT 2

SUMMARY OF PLAINTIFF'S PHOTOGRAPHIC EVIDENCE

EXHIBIT 2

SUMMARY OF PLAINTIFF'S PHOTOGRAPHIC EVIDENCE

**EXHIBIT 55 --- ADMITTED MARCH 3, 2015 PAGE 72 LINES 1-6 OVER
OBJECTION. AERIAL PHOTO OF SELDEN SITE MARKED BY MICROSOFT
AS A COPYRIGHTED IMAGE IN 2007.**

TRANSCRIPT MARCH 3, 2015 PAGE 69 LINES 26-27 PAGE 70 LINES 1-2

THE COURT: Does the photograph accurately depict the property as it existed when you owned it?

MRS. LAWRENCE: Yes it does.

TRANSCRIPT MARCH 3, 2015 PAGE 70 LINES 17-20

ATTORNEY PRITCHARD: Does this photograph accurately depict the condition of the property at the time you sold it to Mrs. Platner?

MRS. LAWRENCE: Yes it does.

TRANSCRIPT MARCH 3, 2015 PAGE 71 LINES 5-23

ATTORNEY BROOKS:Do you know the date of this photograph?

MRS. LAWRENCE: Yes, it's listed here. It's 2007, the same year that we sold the property.

ATTORNEY BROOKS: Do you know the date the photograph was taken?

MRS. LAWRENCE: No, I do not know the date, but I can tell it's in the wintertime.

ATTORNEY BROOKS: And were you present with -- did you take this photograph?

MRS. LAWRENCE: I did not.

ATTORNEY BROOKS: Were you present when this photograph was taken?

MRS. LAWRENCE: I was not.

ATTORNEY BROOKS: Do you have personal knowledge of the conditions on the date the photographer took this photograph?

MRS. LAWRENCE: I don't know exactly the day, no.

ATTORNEY BROOKS: Do you have personal knowledge of the conditions when the photographer took the picture?

MRS. LAWRENCE: I do not...

TRANSCRIPT MARCH 9, 2015 PAGE 58 LIES 26-27 PAGE 59 LINES 1-2.

ATTORNEY COLLINS: MR. DREYER, DOES THIS LOOK LIKE THE PLATNER PROPERTY IN 2007— LATE 2006, I SHOULD SAY, OR EARLY 2007

GLENN DREYER: WELL, THERE'S A DATE OF 2007 ON THE IMAGE. I WASN'T THERE, SO I WOULDN'T KNOW EXACTLY WHAT IT LOOKED LIKE.

TRANSCRIPT MARCH 9, 2015 PAGE 58 LINES 26-27 PAGE 60 LINES 1-4

GLENN DREYER: SO IT APPEARS TO BE RECENT — PROBABLY RECENTLY MOWED. YOU CAN SEE THE LINES THAT INDICATE MOWING THROUGH THE FIELD. THERE ARE SUBTLE —THE FIELD IS BROWN. IT'S A DORMANT TIME OF YEAR. THE VEGETATION IS DORMANT AND THE TOPS ARE DEAD, AND YOU CAN SEE SUBTLE VARIATIONS IN COLOR IN THE FIELD THAT WOULD INDICATE DIFFERENT KINDS OF PLANTS GROWING IN DIFFERENT LOCATIONS..

EXHIBIT 56 NOT OFFERED INTO EVIDENCE

TRANSCRIPT MARCH 3, 2015 PAGE 85 LINES 3-11

ATTORNEY PRITCHARD: ...Could you take a look at Plaintiff's Exhibit 55, and particularly the placement of the cedar trees around the house, and tell me whether you can recognize Plaintiff's Exhibit 56 as a blowup of a portion of Plaintiff's Exhibit 55?

MRS. LAWRENCE: No, it's not.

EXHIBIT 57 NOT OFFERED INTO EVIDENCE (AERIAL PHOTO BY MLS)

TRANSCRIPT MARCH 3, 2015 PAGE 86 LINES 13 -18

ATTORNEY PRITCHARD: Is this photograph a fair and accurate representation of the condition of the immediate vicinity of the house at the time you sold the property to Mrs. Platner?

MRS. LAWRENCE: This is taken at a different time of year, because the trees are fallen. It's hard to tell. It's—the very front, the piece that's next to the river, looks different.

**EXHIBIT 59 ADMITTED OVER OBJECTION MARCH 3, 2015
TRANSCRIPT PAGE 123
(VIEW OF GRASS AND HANSON HILL)
(NOT DATED BY ANY WITNESS)**

ATTORNEY PRITCHARD: Is the photograph at Exhibit 59 a fair and accurate depiction of a portion of Mrs. Platner's property?

BRANDON NOVAK: Yes.

**EXHIBIT 60A ADMITTED THROUGH BEVERLY PLATNER MARCH 5, 2015
PAGE 49 LINES 5-8
(VIEW OF GRASS AND SHRUBS)
(NOT DATED BY ANY WITNESS)**

**EXHIBIT 60B ADMITTED BY AGREEMENT
(NOT DATED BY ANY WITNESS)
(VIEW OF GRASS AND TREE RINGS)**

**EXHIBIT 61 ADMITTED BY AGREEMENT
(NOT DATED BY ANY WITNESS)
(VIEW OF LAWN BEHIND THE HOUSE)**

**EXHIBIT 62 ADMITTED BY AGREEMENT
(NOT DATED BY ANY WITNESS)
(VIEW OF GRASS AND A STAKE)**

**EXHIBIT 63 ADMITTED MARCH 3, 2015 TRANSCRIPT PAGE 148 LINES
13-16**

**(VIEW OF PLATNER AND HANSON HILLSIDE AREAS)
(NOT DATED BY ANY WITNESS)**

ATTORNEY PRITCHARD: ..I am asking you if this photograph is a fair and accurate picture of the hillside area the Novak Brothers landscaped?

BRANDON NOVAK: Yes.

BRIAN PLATNER TRANSCRIPT MARCH 5, 2015, PAGE 125 LINES 6-10 PHOTO DEPICTS
HANSON HOUSE ,HANSON WOODS AND HANSON HILLSIDE AS WELL AS PLATNER AREA.

**EXHIBIT 64 ADMITTED MARCH 3, 2015 TRANSCRIPT PAGE 159 LINES
1-12**

(VIEW OF DRIVEWAY AREA AND UNRESTRICTED WOODS)

THE COURT: DOES THE PHOTO ACCURATELY REPRESENT THE FIELD AS SHOWN IN 64?

BRANDON NOVAK: Yes.

PHOTOGRAPH DATED BY GEORGE MOORE AS AUTUMN OF 2009

TRANSCRIPT MARCH 4, 2015 PAGE 171 LINES 25-27.

BRIAN PLATNER TESTIFIED AS TO DEPICTION OF UNRESTRICTED WOODS PAGE 122 TRANSCRIPT
MARCH 5, 2015

**EXHIBIT 65 ADMITTED MARCH 3, 2015 OVER OBJECTION TRANSCRIPT
PAGE 161 LINES 13-27**

(VIEW OF ROADSIDE SHRUBS AND CEDAR TREES)

THE COURT: WHO DID THE WORK IN THE PHOTOGRAPH?

BRANDON NOVAK: YES I DID.

THE COURT: DID YOU DO THE WORK IN THE PHOTOGRAPH?

BRANDON NOVAK: THE COMPANY DID, YES.

THE COURT: All right. So, this picture is taken after the work was done.

BRANDON NOVAK: Yes.

THE COURT: Objection overruled. Full Exhibit.

Transcript March 4, 2015 PAGE 46 LINES 14-19

ATTORNEY MENDOZA: With respect to Photograph 65, sir, do you know the date the photograph was taken?

BRANDON NOVAK: No.

PHOTOGRAPHED DATED Autumn of 2009 by GEORGE MOORE, photographer
Transcript March 4, 2015 Page 171 Lines 21-22

PHOTOGRAPH DEPICTS UNRESTRICTED AREAS OF LAND AND WOODS
TESTIMONY OF BRIAN PLATNER MARCH 5, 2015 TRANSCRIPT PAGE S 114-115.

EXHIBIT 66 NOT OFFERED INTO EVIDENCE

EXHIBIT 67 ADMITTED MARCH 3, 2015 PAGE 176 LINES 21-24

VIEW OF DAFFODIL BED

PHOTO NOT DATED BY ANY WITNESS

ATTORNEY PRITCHARD: And is this a fair and accurate representation of that portion of the Platners' property to which you just testified?

BRANDON NOVAK: Yes.

EXHIBIT 68 ADMITTED OVER OBJECTION. MARCH 5, 2015

TRANSCRIPT PAGE 97 LINES 22-27 PAGE 98 LINE 1

(VIEW OF UNRESTRICTED WOODS, BARN AND IRRIGATION SOUTH OF DRIVEWAY)

ATTORNEY PRITCHARD: CAN YOU IDENTIFY THE SUBJECT--- CAN YOU---DO YOU KNOW WHAT THIS PICTURE SHOWS?

BRIAN PLATNER: IT'S AN OLDER PICTURE OF THE PROPERTY, OF BEVERLY'S PROPERTY, IT LOOKS LIKE.

ATTORNEY PRITCHARD: AND DOES IT SHOW THE IRRIGATION SYSTEM THAT YOU HAD INSTALLED IN THE FIELD IN OPERATION?

BRIAN PLATNER: I THINK SO.

TRANSCRIPT MARCH 5, 2015 PAGE 99 LINES 21-26 PAGE 100 LINES 1-17

ATTORNEY PRITCHARD: YOUR HONOR, MY CO-COUNSEL HAS REMINDED ME THAT I DID NOT MOVE PLAINTIFF'S EXHIBIT 68 FOR IDENTIFICATION INTO EVIDENCE.

THE COURT: YES.

ATTORNEY PRITCHARD: I MOVE IT INTO EVIDENCE

ATTORNEY PRITCHARD: 68. THAT'S THE---THAT'S ONLY IN FOR ID.

THE COURT: I THOUGHT -- 68 IS ID. 66 IS ALSO ID, ALTHOUGH IT SEEMS TO BE MISLABELED, 66.
SO YOU'RE CORRECT, BUT YOU HAVE NOT.

ATTORNEY MENDOZA: OBJECTION, FOUNDATION.

THE COURT: DO YOU CLAIM TO HAVE A FOUNDATION?

ATTORNEY PRITCHARD: Mr. Platner identified this as the irrigation system in Mrs. Platner's field.

THE COURT: 68?

ATTORNEY PRITCHARD: 68, THE WORKING IRRIGATION SYSTEM.

THE COURT: THAT'S THE IRRIGATION SYSTEM ON THE PROPERTY?

BRIAN PLATNER: YES, IT LOOKS LIKE IT IS.

THE COURT: OVERRULED.

BRIAN PLATNER MARCH 5, 2015 TRANSCRIPT PAGE 126 LINES 16-27 DEPICTION OF
UNRESTRICTED AREA

**EXHIBIT 69 ADMITTED BY AGREEMENT
VIEW OF WORKER ON FERTILIZER SPREADER
NOT DATED BY ANY WITNESS**

**EXHIBIT 70 ADMITTED MARCH 9, 2015 Page 21 Lines 5-23 (Garcia)
(VIEW OF THE BARN AREA SAME VIEW AS EX. 68)
PHOTO NOT DATED BY ANY WITNESS**

**EXHIBIT 71 OFFERED NO OBJECTION
(View of grass near river)
PHOTO NOT DATED BY ANY WITNESS**

TRANSCRIPT MARCH 3, 2015 PAGES 205-206

BRANDON NOVAK: It looks like the area where we hydro-seeded.

**VIEW OF RIVERSIDE
PHOTO NOT DATED BY ANY WITNESS**

**EXHIBIT 73 ADMITTED BY AGREEMENT
VIEW OF DAMAGE TO FIELD
PHOTO NOT DATED**

EXHIBIT 73 - BRIAN PLATNER TRANSCRIPT MARCH 5, 2015 PAGE 128. LINES 17-28 DESCRIBES
UNRESTRICTED AREA 60%

**EXHIBIT 74 ADMITTED THROUGH GEORGE MOORE DATED 9-2007
VIEW OF AN IRRIGATION RELATED PLASTIC HEAD
TRANSCRIPT MARCH 4, 2015 PAGE 158 LINES 8-10.**

EXHIBIT 75 ADMITTED THROUGH GEORGE MOORE DATED 9-2007

VIEW OF GRASS NORTH OF THE DRIVEWAY

TRANSCRIPT MARCH 4, 2015 PAGE 159 LINES 26-7

**EXHIBIT 76 ADMITTED THROUGH GEORGE MOORE DATED 9-2007
ON A DATE HE WAS PRESENT FOR THE PHOTO AND OBSERVED THE
SAME SCENE.**

VIEW OF SELDEN COVE/CREEK ADJACENT AREA

TRANSCRIPT MARCH 4, 2015 PAGE 153 LINES 22-23

EXHIBIT 77 ADMITTED THROUGH GEORGE MOORE DATED 9-2007

VIEW OF SELDEN COVE AREA

TRANSCRIPT MARCH 4, 2015 PAGE 154 LINES 22-25.

EXHIBIT 78 ADMITTED BY AGREEMENT

VIEW OF UNRESTRICTED WOODS

PHOTO NOT DATED BY ANY WITNESS

EXHIBIT 78 THE ENTIRE EXHIBIT IS THE UNRESTRICTED AREA BRIAN PLATNER TRANSCRIPT
MARCH 5, 2015, PAGE 134 LINES 1-2. BARN AREA.

ALSO PAGE 129 LINES 1-14.

**EXHIBIT 79 ADMITTED THROUGH GEORGE MOORE MARCH 4, 2007
DATED AS 9-2007.**

(VIEW OF SOME UNIDENTIFIED WOODS)

TRANSCRIPT PAGE 161 LINES 10-17

ATTORNEY PRITCHARD: Did you observe the scene reflected in this photograph during the course of your walk?

GEORGE MOORE: I HONESTLY CAN'T BE CERTAIN. I MEAN, I ACCOMPANIED THEM, BUT I COULDN'T POINT TO THE MAP AND SAY THIS WAS THERE.

ATTORNEY PRITCHARD: DID YOU WALK THROUGH THE FORESTED AREA OF MRS. PLATNER'S PROPERTY SOUTH OF THE HOUSE DURING THE COURSE OF YOUR VISIT?

GEORGE MOORE: YES.

ATTORNEY PRITCHARD: AND WAS—DOES THIS PHOTOGRAPH FAIRLY REPRESENT THE FLORA AND FAUNA, GENERALLY SPEAKING, OF THE FOREST ON THAT DATE?

GEORGE MOORE: IN CERTAIN PLACES, YES.

BRIAN PLATNER TRANSCRIPT EXHIBIT 79 MARCH 5, 2015 PAGES 135-136 CANNOT TELL IF THIS IS RESTRICTED OR UNRESTRICTED ANGLE COULD BE LOOKING FROM DOCK AND THAT WOULD BE UNRESTRICTED.

**EXHIBIT 80 ADMITTED THROUGH BRIAN PLATNER TRANSCRIPT
MARCH 5, 2015
VIEW OF SOME UNIDENTIFIED WOODS
PHOTO NOT DATED BY ANY WITNESS
PAGE 108 LINES 20-27, PAGE 109, LINES 1-4.**

CANNOT TELL IF UNRESTRICTED OR RESTRICTED PAGE 110, LINES 1-4

**EXHIBIT 81 ADMITTED THROUGH BRIAN PLATNER
VIEW OF UNIDENTIFIED WOODS
PHOTO NOT DATED BY ANY WITNESS
TRANSCRIPT MARCH 5, 2015, PAGE 109 LINES 11-21.**

CANNOT TELL IF UNRESTRICTED OR RESTRICTED PAGE 113, LINES 14-24.

EXHIBIT 82 NOT OFFERED INTO EVIDENCE

EXHIBIT 83 NOT OFFERED MARCH 4, 2014 PAGE 14 LINE 15-18.

EXHIBIT 84 ADMITTED OVER OBJECTION

VIEW OF BEACH AREA

PHOTO NOT DATED BY ANY WITNESS

March 4, 2015 Transcript page 11, Lines 17-20.

ATTORNEY PRITCHARD: DO YOU RECALL WHETHER THESE DRIFTWOOD LOGS, WHOEVER PUT THEM THERE, WERE PUT THERE AFTER MRS. PLATNER ACQUIRED THE PROPERTY?

BRANDON NOVAK: I believe so.

EXHIBIT 85 ADMITTED THROUGH BEVERLY PLATNER MARCH 5, 2015

Transcript page 51 lines 21-25

VIEW OF BEACH AREA

PHOTO NOT DATED THROUGH ANY WITNESS

**Exhibit 86 ADMITTED THROUGH GEORGE MOORE, PHOTOGRAPHER
DATED MARCH OF 2008.**

TRANSCRIPT MARCH 4, 2015 PAGE 142 LINES 19-20

(VIEW OF FLOODED FIELD TAKEN FROM SELDEN ROAD)

EXHIBIT 90 ADMITTED THROUGH JOE STANDART PHOTOGRAPHER

TRANSCRIPT MARCH 11, 2015 PAGE 133

VIEW OF STANDART RESTRICTED AREA

DATED 2012-2013 BY STANDART

EXHIBIT 91 ADMITTED THROUGH JOE STANDART PHOTOGRAPHER

Transcript March 11, 2015 Page 135

VIEW OF STANDART RESTRICTED AREA

DATED 2012-2013 BY STANDART

EXHIBIT 3

Definitions of the commonly understood meaning of the word “grass”

EXHIBIT 3

grass (grās)

n.

1. a. A member of the grass family.
b. The members of the grass family considered as a group.
2. Any of various plants having slender leaves similar to those of a grass.
3. An expanse of ground, such as a lawn, covered with grass or similar plants.
4. Grazing land; pasture.
5. *Slang* Marijuana.
6. *Electronics* Small variations in amplitude of an oscilloscope display caused by electrical noise.

[Middle English *gras*, from Old English *græs*; see *ghræ-* in the Appendix of Indo-European roots.]

Century Dictionary and Cyclopedia (1914):

grass (grās), *n.* [*<* ME. *gras*, *gres*, sometimes transposed *gers*, *gyrs*, Sc. *girs*, *<* AS. *græs*, transposed *gars* = OS. *gras* = OFries. *gers*, *gres* = D. *gras* = MLG. *gras*, *gres* = OHG. *gras*, *cras* = MHG. *G. gras*, *grass*, herbage (applicable to any small plant), = Icel. *gras* = Sw. *gräs* = Dan. *græs*, *grass*, = Goth. *gras*, the first growth of corn, etc., a plant or herb; akin to MHG. *gruoso*, first growth, = MD. *groese*, the green sod, turf, and prob. to *green*¹ and *grow*. There is no proof of a connection with L. *grāmen*, grass (see *gramineous*), or with Gr. *χρῆσις*, grass.] 1. In general, herbage; the plants on which cattle and other beasts feed or pasture; the verdurous covering of the soil. In popular use the name is applied to a great variety of plants which are in no way related to grasses technically so called. See def. 2.

And forth she went priuoly
Unto the Parko was fasto by,
All softe walkende on the *gras*.
Gower, Conf. Amant., iv.

1. In general, herbage; the plants on which cattle and other beast feed or pasture; the verdurous covering of the soil. In popular use the name is applied to a great variety of plants which are in no way related to grasses technically so called,

Webster's Revised Unabridged Dictionary (1913)

Grass (Page: 646)

Grass (?), *n.* [OE. *gras*, *gres*, *gers*, AS. *grs*, *grs*; akin to OFries. *gres*, *gers*, OS., D., G., Icel., & Goth. *gras*, Dan. *grs*, Sw. *grs*, and prob. to Z. *green*, *grow*. Cf. *Graze*.]

1. Popularly: Herbage; the plants which constitute the food of cattle and other beasts; pasture.

Webster's 1828

GRASS, *noun*

1. In common usage, herbage; the plants which constitute the food of cattle and other beasts.

Webster's Common Sense Dictionary (1902):

Grass *gras n.* Herbage; the verdurous covering of the soil.

OXFORD ENGLISH DICTIONARY

grass (gras, -æ-), *sb.*¹ Forms: *a.* 1 *græs*, (*pl.* *grasu*), 3-5 *gres*, 3-6 *gras*, (3 *grace*, *graes*, 4 *grece*, *grees*), 4 *gris*(e, 4, 6 *grissa*(e, 4-6 *gress*(e, 4-7 *grasse*, (5 *graa*s, *grase*, *graz*), 6- *grass*. *β.* 1 *gæra*, *gers*, subsequently *Sc.* and *north. dial.* 4, 6-9 *gers*(e, 4-6 *gyrs*(s, 5-6 *gyrse*, 5, 9 *girss*, 6, 9 *gerss*, 6-9 *girs*(e. [*Com. Teut.*: OE. *græs*, *gærs* str. neut. = OFris. *gres*, *gers*, OS. *gras* (MDu. *gras*, *gars*, *gers*, mod.Du. *gras*), OHG. (MHG., mod.Ger.), ON. (Sw. *gräs*, Da. *græs*), Goth. *gras*:—OTeut. **graso**, f. OTeut. root **gra*:- *grā*- (whence MHG. *gruose* young plants; also GREEN *a.*, GROW *v.*):—OAryan **ghrā*- to grow, whence L. *grāmen* grass.]

1. *a.* Herbage in general, the blades or leaves and stalks of which are eaten by horses, cattle, sheep, etc. Also, in a narrower sense, restricted to the smaller non-cereal *Gramineæ* (see 3), and plants resembling these in general appearance. In early use often *pl.*, but now only *collect. sing.*

2. A kind of grass; one of the various species of plants spoken of collectively as grass.

c. In agricultural use: Any of the species of plants grown for pasture, or for conversion into hay.

d. *Bot.* Any plant belonging to the order *Gramineæ* (*Graminaceæ*), which includes most of the plants called 'grass' in the narrower popular sense (see 1) together with the cereals (barley, oats, rye, wheat, etc.), the reeds, bamboos, etc.

4. †*a.* The blade stage of growth, in phr. *in the grass* (lit. and fig.); corn in the blade. *Obs.*

b. *Gardening.* Applied to the young shoots of the onion. Also, the young shoots of the carnation.

9. *a.* The grassy earth, grass-covered ground; *esp.* ground covered with grass closely mown and rolled, forming a lawn in a public or private garden. Phr. *keep off the grass*: a notice frequently posted in a park or garden to which the public are admitted; also used *fig.* as a warning not to take liberties, encroach, or interfere. †In early use *into*, *under grass* = into or in the grave.

The New-England farmer; or,

Georgical dictionary, Samuel Deane, (1790)

GRASS, a general name for most of those plants which are used in feeding cattle, both in their green and dry state.

"a general name for most of those plants which are used in feeding cattle, both in their green and dry state."

A Dictionary of the English Language, Samuel Johnson (1755)

GRASS. *n. f.* [*græf*, Saxon.] The common herbage of the field on which cattle feed; an herb with long narrow leaves.

Ye are grown fat as the heifer at *grafs*, and bellow as bulls. *Jer. l. 11.*

The trade of beef for foreign exportation was prejudiced, and almost sunk; for the flesh being young, and only *grafs* fed, was thin, light and moist, and not of a substance to endure the salt, or be preserved by it, for long voyages, or a slow consumption. *Temple.*

You'll be no more your former you;

But for a blooming nymph will pass,

Just fifteen, coming Summer's *grafs*.

Swift.

GRASS ... The common herbage of the field on which cattle feed; an herb with long narrow leaves.

DOCKET NO: KNLCV096001607S

SUPERIOR COURT

ORDER 080571

LYME LAND CONSERVATION TRUST,
INC.

V.
PLATNER, BEVERLY Et Al

JUDICIAL DISTRICT OF NORWICH/NEW
LONDON
AT NEW LONDON

11/9/2015

ORDER

ORDER REGARDING:
08/06/2015 232.00 MOTION TO REARGUE/RECONSIDER

The foregoing, having been considered by the Court, is hereby:

ORDER: DENIED

Selective quotes from testimony where the court has already made its factual findings and conclusions hardly justify granting a motion for reargument. It is therefore denied

080571

Judge: JOSEPH Q KOLETSKY

DOCKET NO: KNLCV096001607S

SUPERIOR COURT

ORDER 080571

LYME LAND CONSERVATION TRUST,
INC.

JUDICIAL DISTRICT OF NORWICH/NEW
LONDON

V.
PLATNER, BEVERLY Et Al

AT NEW LONDON

11/23/2015

ORDER

The following order is entered in the above matter:

ORDER:

In conjunction with the court's retention of jurisdiction to oversee the implementation of the injunction it ordered (mandatory portions of which are stayed pending appeal) the court has held additional hearings to become further informed as to alternatives to the two suggested methods of complying with the court's order to restore the property subject to the conservation easement, neither of which seemed reasonable (rolling up all the sod on the protected property or doing nothing and letting time solve things).

The parties have submitted planting plans after the court heard further evidence. The court now orders defendant to comply with the planting plan submitted to the court by plaintiff and dated August 7, 2015, in order to restore the property to its condition when defendant took the property.

Further, to do all possible to render a final judgment, the court reaffirms its previous prohibitory orders, the court having been advised that the one permitted mowing was accomplished recently during the fall. Further mowings will be permitted on motion presented to the court, after notice to plaintiff.

Finally the court orders the portion of the driveway encroaching on the protected area to be removed and restored. There is no question as to the impropriety of this encroachment, but this mandatory order is stayed pending appeal.

nho
ce,

080571

Judge: JOSEPH Q KOLETSKY

DOCKET N^o. KNL-CV-09-6001607-S

LYME LAND CONSERVATION
TRUST, INC., et al.

vs.

PLATNER, BEVERLY

SUPERIOR COURT

JUDICIAL DISTRICT
OF NEW LONDON
AT NEW LONDON


FEBRUARY 16, 2016

**JOINT MOTION FOR ORDER IN ACCORDANCE WITH STIPULATION
(REGARDING "LAND SWAP" AND DRIVEWAY ENCROACHMENT)**

All of the parties having entered into the attached stipulation regarding a "land swap" of (a) certain of the "Protected Areas" (or part of so-called "Area 'B' Restricted Area") for (b) part of the "Unrestricted Area" (in the Declaration of Restrictive Covenants that is the subject of this action), jointly,

1. waive calendaring of this motion; and
2. move this Honorable Court to enter the attached Order in Accordance with Stipulation in the form attached hereto, without hearing.

BY: 065975
Tracy Collins, for
Waller Smith & Palmer, P.C. its attorneys
P.O. Box 88, New London CT 06320
Telephone (203) 442-0367
tmcollins@wallersmithpalmer.com
Juris No. 65975

BY: 
John R. Lambert, her attorney
25 Trumbull Place
North Haven CT 06473
Telephone 203) 234.8121
johnrlambert@gmail.com
Juris No. 101328

THE INTERVENING PLAINTIFF, ATTORNEY GENERAL,
STATE OF CONNECTICUT

BY: 415091
Gary W. Hawes, AAG
55 Elm Street, P.O. Box 120
Hartford, CT 06141
gary.hawes@ct.gov
Juris No. 415091

ORDER IN ACCORDANCE WITH STIPULATION

The foregoing Motion and attached Stipulation having been submitted and considered,

it is hereby ORDERED: GRANTED and except as to mootng the portion of this Court's July 17, 2015 Order directing that "the portion of the driveway encroaching on the protected area [be] removed and restored," the Court's orders in this case shall remain in full force and effect subject to the appeal taken by the defendant.

BY THE COURT (Koletsky, J.T.R.)

Hon. Joseph Q. Koletsky /Judge Trial Referee

Assistant Clerk

CERTIFICATION OF SERVICE

I hereby certify that, on this 16th day of February 2016, a copy of the foregoing motion pursuant to P.B. §11-11 and order and attached Stipulation were sent electronically by email to all counsel of record as follows:

As to plaintiff, the Lyme Land Conservation Trust, Inc., to the following:

john.pritchard@pillsburylaw.com, and to, tmcollins@wallersmithpalmer.com,

As to the intervening plaintiff, George Jepsen., to the following:

AG.Jepsen@ct.gov, Gary.Hawes@ct.gov, and to Karen.Gano@ct.gov

As to the defendant, Beverly Platner: to other counsel appearing for her, as follows;

santamendoza@comcast.net and to, jb@attorneyjanetbrooks.com and steve@blpent.com



John R. Lambert, Comm'r of the Superior Court

DOCKET N^o: KNL-CV-09-6001607-S

LYME LAND CONSERVATION
TRUST, INC., et al.

vs.

PLATNER, BEVERLY

SUPERIOR COURT

JUDICIAL DISTRICT
OF NEW LONDON
AT NEW LONDON

FEBRUARY 16, 2016

JOINT STIPULATION REGARDING "LAND SWAP"

The parties hereby stipulate they have agreed to exchange a 5508 square foot portion of Mrs. Beverly Platner's land that is subject to a certain Declaration of Restrictive Covenants recorded 12-21-1981 in Volume 71 at pages 223-228 of the Lyme Land Records (the "Conservation Restriction") for a piece of her land of similar size not currently subject to the Conservation Restriction as the remedy for the encroachment of the Defendant's driveway on a portion of the "Protected Areas" referred to in said Conservation Restriction (which Protected Areas were also referred to as "Area 'B' Restricted Area" upon a certain map referred to therein, titled "Land of Paul Selden Lyme, Ct." dated May 22, 1981, prepared by Richard W. Gates, Land Surveyor, which map depicted the original bounds of the Protected Areas and the "Unrestricted Area" and was filed with the Lyme Town Clerk as part of the Conservation Restriction), more particularly as follows:

The "Area 'B' Restricted Area" as depicted on the map attached hereto as Exhibit A shall hereafter delineate the boundaries between the portions of defendant Beverly Platner's property that constitute Protected Areas under the Conservation Restriction and the portions of her property that constitute the Unrestricted Area that is not subject to such Restriction. The portion of the original and currently Protected Area depicted as on the Garcia Map as "Total 5508 SF to Platner" (and defined by lines on said map labeled "New Restricted Area Line" and "Restricted Area Line to be Eliminated") is hereby released

from the provisions of the Conservation Restriction and the portion of the original and currently Unrestricted Area and identified on the Garcia Map as "Total 5508 SF to Land Trust" (and defined by lines on said map labeled "Restricted Area Line to be Added" and "Restricted Area Line to be Removed") shall be hereafter subject to the Conservation Restriction (as part of the Protected Area).

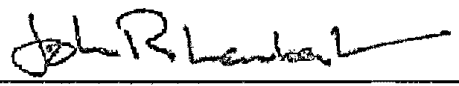
The areas being exchanged are approximately equal in size and conservation value. The Defendant, Beverly Platner, shall cause the existing A-2 survey of her property to be amended to reflect accurately the amended boundaries of the Protected Areas resulting from implementation of this stipulation and Defendant shall, at her expense, file an acceptable, signed and sealed Mylar® of the Garcia Map delineating the amended Protected Areas with the Lyme Town Clerk.

Except as to mootng the portion of this Court's July 17, 2015 Order directing that "the portion of the driveway encroaching on the protected area [be] removed and restored," the Court's orders in this case shall remain in full force and effect subject to the appeal taken by the defendant.

THE PLAINTIFF, LYME LAND CONSERVATION TRUST,
INC.

THE DEFENDANT, BEVERLY PLATNER

BY: 065975
Tracy Collins, for
Waller Smith & Palmer, P.C. its attorneys
P.O. Box 88, New London CT 06320
Telephone (203) 442-0367
tmcollins@wallersmithpalmer.com
Juris No. 65975

BY: 
John R. Lambert, her attorney
25 Trumbull Place
North Haven CT 06473
Telephone 203) 234.8121
johnrlambert@gmail.com
Juris No. 101328

THE INTERVENING PLAINTIFF, ATTORNEY GENERAL,
STATE OF CONNECTICUT

BY: 415091
Gary W. Hawes, AAG
55 Elm Street, P.O. Box 120
Hartford, CT 06141
gary.hawes@ct.gov
Juris No. 415091

DOCKET N^o. KNL-CV-09-6001607-S

LYME LAND CONSERVATION
TRUST, INC., et al.

vs.

PLATNER, BEVERLY

SUPERIOR COURT

JUDICIAL DISTRICT
OF NEW LONDON
AT NEW LONDON

FEBRUARY 16, 2016

JOINT STIPULATION REGARDING "LAND SWAP"

The parties hereby stipulate they have agreed to exchange a 5508 square foot portion of Mrs. Beverly Platner's land that is subject to a certain Declaration of Restrictive Covenants recorded 12-21-1981 in Volume 71 at pages 223-228 of the Lyme Land Records (the "Conservation Restriction") for a piece of her land of similar size not currently subject to the Conservation Restriction as the remedy for the encroachment of the Defendant's driveway on a portion of the "Protected Areas" referred to in said Conservation Restriction (which Protected Areas were also referred to as "Area 'B' Restricted Area" upon a certain map referred to therein, titled "Land of Paul Selden Lyme, Ct." dated May 22, 1981, prepared by Richard W. Gates, Land Surveyor, which map depicted the original bounds of the Protected Areas and the "Unrestricted Area" and was filed with the Lyme Town Clerk as part of the Conservation Restriction), more particularly as follows:

The "Area 'B' Restricted Area" as depicted on the map attached hereto as Exhibit A shall hereafter delineate the boundaries between the portions of defendant Beverly Platner's property that constitute Protected Areas under the Conservation Restriction and the portions of her property that constitute the Unrestricted Area that is not subject to such Restriction. The portion of the original and currently Protected Area depicted as on the Garcia Map as "Total 5508 SF to Platner" (and defined by lines on said map labeled "New Restricted Area Line" and "Restricted Area Line to be Eliminated") is hereby released

from the provisions of the Conservation Restriction and the portion of the original and currently Unrestricted Area and identified on the Garcia Map as "Total 5508 SF to Land Trust" (and defined by lines on said map labeled "Restricted Area Line to be Added" and "Restricted Area Line to be Removed") shall be hereafter subject to the Conservation Restriction (as part of the Protected Area).

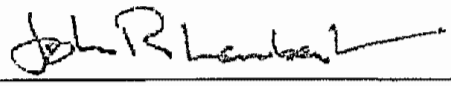
The areas being exchanged are approximately equal in size and conservation value. The Defendant, Beverly Platner, shall cause the existing A-2 survey of her property to be amended to reflect accurately the amended boundaries of the Protected Areas resulting from implementation of this stipulation and Defendant shall, at her expense, file an acceptable, signed and sealed Mylar® of the Garcia Map delineating the amended Protected Areas with the Lyme Town Clerk.

Except as to mootng the portion of this Court's July 17, 2015 Order directing that "the portion of the driveway encroaching on the protected area [be] removed and restored," the Court's orders in this case shall remain in full force and effect subject to the appeal taken by the defendant.

THE PLAINTIFF, LYME LAND CONSERVATION TRUST,
INC.

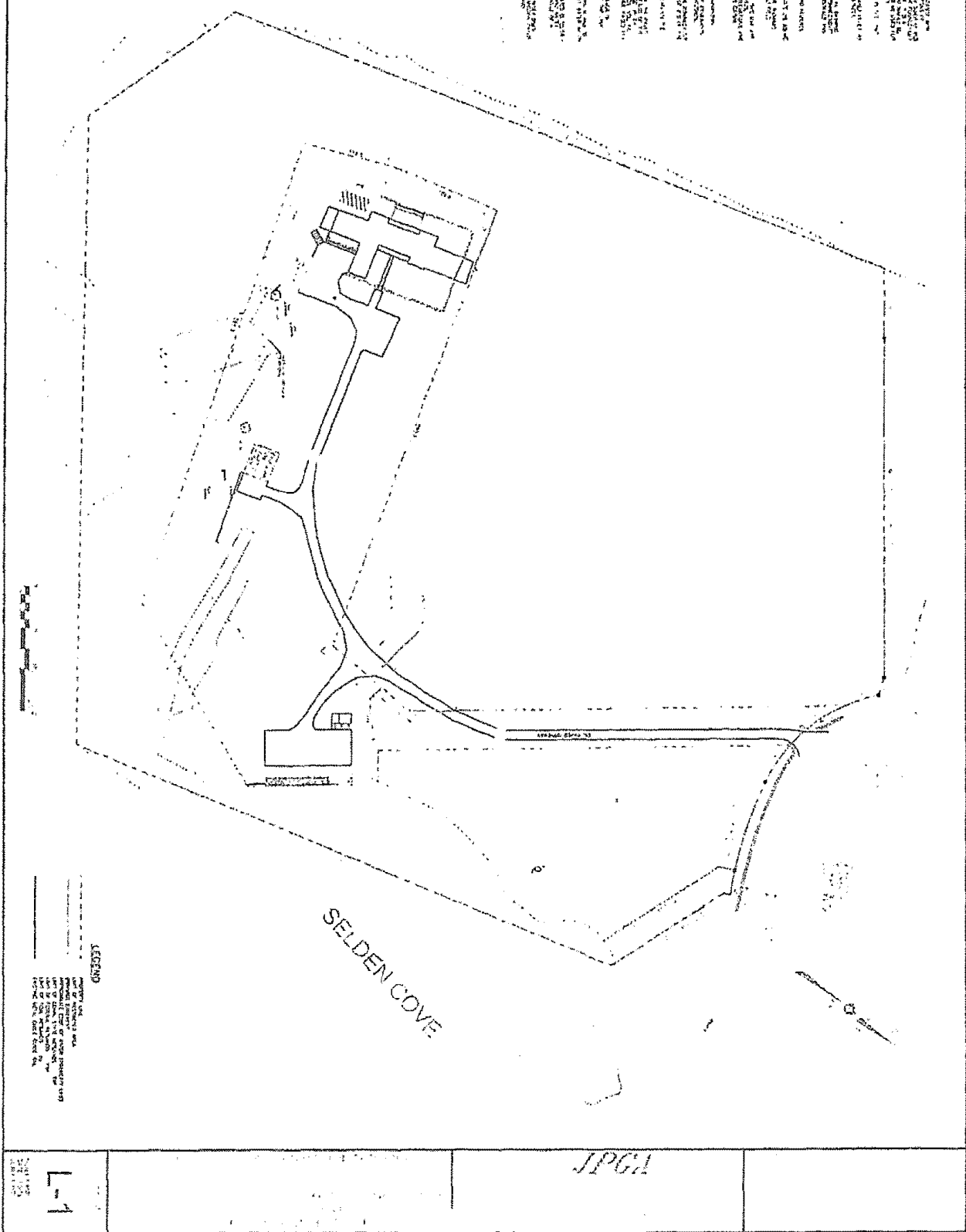
THE DEFENDANT, BEVERLY PLATNER

BY: 065975
Tracy Collins, for
Waller Smith & Palmer, P.C. its attorneys
P.O. Box 88, New London CT 06320
Telephone (203) 442-0367
tmcollins@wallersmithpalmer.com
Juris No. 65975

BY: 
John R. Lambert, her attorney
25 Trumbull Place
North Haven CT 06473
Telephone 203) 234.8121
johnrlambert@gmail.com
Juris No. 101328

THE INTERVENING PLAINTIFF, ATTORNEY GENERAL,
STATE OF CONNECTICUT

BY: 415091
Gary W. Hawes, AAG
55 Elm Street, P.O. Box 120
Hartford, CT 06141
gary.hawes@ct.gov
Juris No. 415091

[illegible]

DOCKET NO: KNLCV096001607S

LYME LAND CONSERVATION TRUST,
INC.

V.
PLATNER, BEVERLY Et Al

SUPERIOR COURT

JUDICIAL DISTRICT OF NORWICH/NEW
LONDON
AT NEW LONDON

ORDER 080571

2/17/2016

ORDER

ORDER REGARDING:
02/16/2016 244.00 MOTION FOR ORDER

The foregoing, having been considered by the Court, is hereby:

ORDER: GRANTED

In accordance with the February 16th, 2016 stipulation of the parties, the motion for order concerning the "land swap" is granted.

080571

Judge: JOSEPH Q KOLETSKY

STATE OF CONNECTICUT

KNL-CV-09-6001607-S

:

SUPERIOR COURT

LYME LAND CONSERVATION TRUST
P.O. Box 1002
Lyme, CT 06371

:

J.D. OF NORWICH/NEW LONDON

and

STATE OF CONNECTICUT
Intervening Plaintiff
c/o Attorney General's Office
55 Elm Street
PO Box 120
Hartford CT 06141

:

AT NEW LONDON

vs.

:

BEVERLY PLATNER
66 Selden Road
Lyme, CT 06371

:

March 26, 2015

Present: Hon. Joseph Q. Koletsky, Judge

JUDGMENT

This action, by writ and complaint, seeking declaratory judgment, injunctive relief and damages, commenced on October 14, 2009, and thence to later times when the parties appeared and were at issue, as on file.

The Court found for the plaintiff and ordered that the property subject to the conservation restriction be restored to the condition it was in at the time defendant acquired the property. The Court awarded damages under C.G.S. § 52-560a(d) in the amount of \$350,000.00. The Court also awarded counsel fees of \$115,000.00 for plaintiff's counsel Attorneys Pritchard and Russo, as well as counsel fees of \$185,000.000 for a total award of \$300,000.00 attorney's fees.

BY THE COURT,


Deputy Chief Clerk

APPEAL - CIVIL

JD-SC-28 Rev. 12-08
P.B. §§ 3-8, 62-8, 63-3, 63-4, 63-10
C.G.S. §§ 31-301b, 51-197f, 52-470

State of Connecticut

Filing Date: 04/28/2015

(Page 1 of 2)

Payable: 151740-1

See Instructions on Back/page 2

Ticket: CIV575999999

Receipt Nbr: 040229

Amount: \$250.00

☐ To Supreme Court ☒ To Appellate Court

Name of case (State full name of case as it appears in the judgment file)

Lyme Land Conservation Trust, Inc. v. Beverly Platner et al.

Classification

☒ Appeal☐ Cross appeal☐ Joint appeal☐ Amended appeal☐ Stipulation for reservation☐ Corrected/amended appeal form

Other (Specify)

Total: \$250.00

Trial Court History

Tried to

☒ Court☐ Jury

Trial court location

New London

Trial court judges being appealed

Koletsky, J.

List all trial court docket numbers, including all location prefixes

KNL CV 09-6001607S

All other trial court judge(s) who were involved with the case

Cosgrove, Devine, Vasington, Leuba

Judgment for (Where there are multiple parties, specify any individual party or parties for whom judgment may have been entered.)

☒ Plaintiff☐ Defendant☐ Other:

Judgment date of decision being appealed

03/12/2015

Date of issuance of notice on any order on any motion which would render judgment ineffective

04/14/2015

Date for filing appeal extended to

Case type

☐ Juvenile — Termination of Parental Rights ☐ Juvenile — Order of Temporary Custody ☐ Juvenile — Other☐ Civil/Family: Major/Minor code☐ Habeas Corpus☐ Workers compensation☒ Other M50

For habeas corpus or zoning appeals indicate the date certification was granted:

Appeal

Appeal filed by (Where there are multiple parties, specify the name of the individual party or parties filing this appeal.)

☐ Plaintiff(s)☒ Defendant(s) Beverly Platner☐ Other

From (the action which constitutes the appealable judgment or decision): Judgment for the Plaintiff on 3/12/15 and 3/26/15 and \$

Decision on Motion to Reargue on 4/14/15

If to the Supreme Court, the statutory basis for the appeal (Connecticut General Statutes section 51-199)

By (Signature of attorney or self-represented party)

Telephone number

860-522-8338

Fax number

860-728-0401

Juris number (if applicable)

038478

Type name and address of person signing above (This is your appearance; see Practice Book section 62-8)

Brendon P. Levesque, Horton, Shields & Knox, 90 Gillett St., Hartford CT 06105

E-mail address

blevesque@hortonshieldsknox.com

Appearance

"X" one if applicable

☒ Counsel or self-represented party who files this appeal will be deemed to have appeared in addition to counsel of record who appeared in the trial court under Practice Book section 62-8.☐ Under Practice Book section 3-8, counsel or self-represented party who files this appeal is appearing in place of:

Name of counsel or self-represented party

Juris number (if applicable)

Certification (Practice Book section 63-3)

I certify that a copy of this appeal was mailed or delivered to all counsel and self-represented parties of record as required by Practice Book section 62-7 on: 4/28/15

Signed (individual counsel/self-represented party)

* Attach a list with the name, telephone number and fax number of each counsel and self-represented party and the address where the copy was mailed or delivered.

To Be Completed By Trial Court Clerk☒ Entry Fee Paid☐ No Fees Required

Fees, Costs, and Security waived by Judge (enter judge's name below)

Judge

Date waived

Signed (Clerk of trial court)

Date

4/28/15

The clerk of the original trial court, if different from this court, was notified on 4/28/15 that this appeal was filed.

In habeas matters, a copy of this endorsed appeal was provided to the Office of the Chief State's Attorney, Appellate Bureau, on

Documents to be given to the Appellate Clerk with the endorsed Appeal form

The following documents must be filed with the Appellate Clerk when filing the endorsed appeal form; Practice Book sections 63-3 and 63-4.

1. Preliminary Statement of the Issues

2. Preliminary Designation of Pleadings

3. Court Reporter's Acknowledgment/Certification re transcript

4. Docketing Statement

5. Statement for Preargument Conference (form JD-SC-28A)

6. Draft Judgment File

7. Constitutionality Notice (if applicable)

8. Sealing Order form, if any

9. List of counsel of record in trial court (DS1 received from clerk)

10. Proof of receipt of the copy of the endorsed appeal form by the original trial court clerk or the clerk of the court or courts where the case was transferred, if the case was in more than one trial court

Certification

I certify that a copy of the endorsed appeal and all documents to be given to the Appellate Clerk with the endorsed Appeal form were mailed or delivered to all counsel and self-represented parties of record as required by Practice Book section 63-3 on: 5/6/15

Signed (individual counsel or self-represented party)

* Attach a list with the name, telephone number and fax number of each counsel and self-represented party and the address at which the copy was mailed or delivered.

APPEAL - CIVIL

JD-SC-28 Rev. 12-09
P.B. §§ 3-8, 62-8, 63-3, 63-4, 63-10
C.G.S. §§ 31-301b, 51-197i, 52-470

State of Connecticut
Date: 07/21/2015
Payfile: 1520240-1

(Page 1 of 2)

Docket: 01529998396
See instructions on Back/page 2
Receipt Nbr: 0407220

☐ To Supreme Court ☒ To Appellate Court

Name of case (State full name of case as it appears in the judgment file)

LYME LAND CONSERVATION TRUST, ET AL. VS. BEVERLY PLATNER, ET AL.

Classification
☐ Appeal ☐ Cross appeal ☐ Joint appeal ☒ Amended appeal ☐ Stipulation for reservation ☐ Corrected/amended appeal form ☐ Other (Specify)

Tried to
☒ Court ☐ Jury

Trial court judges being appealed
Koletsy, J.

All other trial judge(s) who were involved with the case
Cosgrove, Devine, Vasington, Leuba

Judgment for (Where there are multiple parties, specify any individual party or parties for whom judgment may have been entered.)
☒ Plaintiff ☐ Defendant ☐ Other:

Judgment date of decision being appealed
3/12/15

Case type
☐ Juvenile — Termination of Parental Rights ☐ Juvenile — Order of Temporary Custody ☐ Juvenile — Other

☐ Civil/Family: Major/Minor code ☐ Habeas Corpus ☐ Workers compensation ☒ Other M50

For habeas corpus or zoning appeals indicate the date certification was granted:

Appeal filed by (Where there are multiple parties, specify the name of the individual party or parties filing this appeal.)
☐ Plaintiff(s) ☒ Defendant(s) Beverly Platner ☐ Other

From (the action which constitutes the appealable judgment or decision): Judgment for the Plaintiff dated 3/12/15 and 3/26/15;

Decision on Motion to Reargue dated 4/14/15; and Decision on Motion for Reargument dated 7/16/15

If to the Supreme Court, the statutory basis for the appeal (Connecticut General Statutes section 51-199)

By (Signature of attorney or self-represented party)
Brondon P. Levesque

Telephone number
(860) 522-8338

Fax number
(860) 728-0401

Juris number (if applicable)
038478

Type name and address of person signing above (This is your appearance; see Practice Book section 62-8)
Brondon P. Levesque, Horton Shields & Knox, 90 Gillett St, Hartford, CT 06105

E-mail address
blevesque@hortonshieldsknox.com

X one if applicable
☒ Counsel or self-represented party who files this appeal will be deemed to have appeared in addition to counsel of record who appeared in the trial court under Practice Book section 62-8.

☐ Under Practice Book section 3-8, counsel or self-represented party who files this appeal is appearing in place of:

Name of counsel or self-represented party

Juris number (if applicable)

I certify that a copy of this appeal was mailed or delivered to all counsel and self-represented parties of record as required by Practice Book section 62-7 on: 7/21/15

* Attach a list with the name, telephone number and fax number of each counsel and self-represented party and the address at which the copy was mailed or delivered.

To Be Completed By Trial Court Clerk
☐ Entry Fee Paid ☒ No Fees Required ☐ Fees, Costs, and Security waived by Judge (enter judge's name below)

Judge

Date waived

Signed (Clerk of trial court)
Ar Bell

Date
7/21/15

The clerk of the original trial court, if different from this court, was notified on 7/21/15 that this appeal was filed.

In habeas matters, a copy of this endorsed appeal was provided to the Office of the Chief State's Attorney, Appellate Bureau, on:

Documents to be given to the Appellate Clerk with the endorsed Appeal form

The following documents must be filed with the Appellate Clerk when filing the endorsed appeal form; Practice Book sections 63-3 and 63-4.

1. Preliminary Statement of the Issues
2. Preliminary Designation of Pleadings
3. Court Reporter's Acknowledgment/Certification re transcript
4. Docketing Statement
5. Statement for Presumptive Conference (form JD-SC-28A)
6. Draft Judgment File

7. Constitutionality Notice (if applicable)
8. Sealing Order form, if any
9. List of counsel of record in trial court (DS1 received from clerk)
10. Proof of receipt of the copy of the endorsed appeal form by the original trial court clerk or the clerk of the court or courts where the case was transferred, if the case was in more than one trial court

I certify that a copy of the endorsed appeal and all documents to be given to the Appellate Clerk with the endorsed Appeal form were mailed or delivered to all counsel and self-represented parties of record as required by Practice Book section 63-3 on:

* Attach a list with the name, telephone number and fax number of each counsel and self-represented party and the address at which the copy was mailed or delivered.

Signed (individual counsel or self-represented party)

APPEAL - CIVIL

JD-SC-28 Rev. 12-09
P.B. §§ 3-8, 62-6, 63-3, 63-4, 63-10
C.G.S. §§ 31-301b, 51-197f, 52-470

State of Connecticut
Case No. 11-24754
Practice Book § 31-301b

(Page 1 of 2)

See Instructions on Back/page 2
Revised Court Appellate
November 2014

☐ To Supreme Court ☒ To Appellate Court

Name of case (State full name of case as it appears in the judgment file)

Lyme Land Conservation Trust, Inc. v. Beverly Platner, et al.

Classification
☐ Appeal ☐ Cross appeal ☐ Joint appeal ☒ Amended appeal ☐ Stipulation for reservation ☐ Corrected/amended appeal form ☐ Other (Specify)

Trial Court History	Tried to <input checked="" type="checkbox"/> Court <input type="checkbox"/> Jury	Trial court location New London
	Trial court judge(s) being appealed Koletsy, J.	List all trial court docket numbers, including all location prefixes KNL CV 09-6001607S
	All other trial court judge(s) who were involved with the case Cosgrove, Devine, Vasington, Leuba	
	Judgment for (Where there are multiple parties, specify any individual party or parties for whom judgment may have been entered.) <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Other:	
	Judgment date of decision being appealed 07/17/2015	Date of issuance of notice on any order on any motion which would render judgment ineffective
Appeal	Case type <input type="checkbox"/> Juvenile — Termination of Parental Rights <input type="checkbox"/> Juvenile — Order of Temporary Custody <input type="checkbox"/> Juvenile — Other <input type="checkbox"/> Civil/Family: Major/Minor code <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Workers compensation <input checked="" type="checkbox"/> Other M90	
	For habeas corpus or zoning appeals indicate the date certification was granted:	
	Appeal filed by (Where there are multiple parties, specify the name of the individual party or parties filing this appeal.) <input type="checkbox"/> Plaintiff(s) <input checked="" type="checkbox"/> Defendant(s) Beverly Platner <input type="checkbox"/> Other	
From (the action which constitutes the appealable judgment or decision): Denial of Motion for Reargument on 11/9/15 and Orders rendered on 11/23/15		
If to the Supreme Court, the statutory basis for the appeal (Connecticut General Statutes section 51-199)		
Appearance	By (Signature of attorney or self-represented party) Karen L. Dowd	Telephone number 860-522-8338
	Fax number 860-728-0401	Juris number (if applicable) 038478
	Type name and address of person signing above (This is your appearance; see Practice Book section 62-8) E-mail address Karen L. Dowd, Horton, Shields & Knox, 90 Gillett St., Hartford CT 06105 kdwod@hortonshieldsknox.com	
"X" one if applicable <input checked="" type="checkbox"/> Counsel or self-represented party who files this appeal will be deemed to have appeared in addition to counsel of record who appeared in the trial court under Practice Book section 62-8. <input type="checkbox"/> Under Practice Book section 3-8, counsel or self-represented party who files this appeal is appearing in place of:		
Name of counsel or self-represented party Juris number (if applicable)		
Certification (Practice Book section 63-3)	I certify that a copy of this appeal was mailed or delivered to all counsel and self-represented parties of record as required by Practice Book section 62-7 on: 11/24/15	
	Signed (Individual counsel/self-represented party) Karen L. Dowd	
* Attach a list with the name, telephone number and fax number of each counsel and self-represented party and the address where the copy was mailed or delivered.		
To Be Completed By Trial Court Clerk <input type="checkbox"/> Entry Fee Paid <input checked="" type="checkbox"/> No Fees Required <input type="checkbox"/> Fees, Costs, and Security waived by Judge (enter judge's name below)		Court Use Only Date and time filed
Judge	Date waived	
Signed (Clerk of trial court) [Signature]	Date 11/24/15	
The clerk of the original trial court, if different from this court, was notified on 11/24/15 that this appeal was filed. In habeas matters, a copy of this endorsed appeal was provided to the Office of the Chief State's Attorney, Appellate Bureau, on		
Documents to be given to the Appellate Clerk with the endorsed Appeal form	The following documents must be filed with the Appellate Clerk when filing the endorsed appeal form; Practice Book sections 63-3 and 63-4.	
	1. Preliminary Statement of the Issues 2. Preliminary Designation of Pleadings 3. Court Reporter's Acknowledgment/Certification re transcript 4. Docketing Statement 5. Statement for Preargument Conference (form JD-SC-28A) 6. Draft Judgment File 7. Constitutionality Notice (if applicable) 8. Sealing Order form, if any 9. List of counsel of record in trial court (DS1 received from clerk) 10. Proof of receipt of the copy of the endorsed appeal form by the original trial court clerk or the clerk of the court or courts where the case was transferred, if the case was in more than one trial court	
Certification	I certify that a copy of the endorsed appeal and all documents to be given to the Appellate Clerk with the endorsed Appeal form were mailed or delivered to all counsel and self-represented parties of record* as required by Practice Book section 63-3 on:	
	Signed (Individual counsel/self-represented party) [Signature]	
* Attach a list with the name, telephone number and fax number of each counsel and self-represented party and the address at which the copy was mailed or delivered.		

A.C. 37900 : APPELLATE COURT
LYME LAND CONSERVATION
TRUST INC., et al. :
vs. :
BEVERLY PLATNER, et al. : NOVEMBER 30, 2015

AMENDED DOCKETING STATEMENT

Pursuant to Practice Book § 63-4(a)(4), the Defendant provides the following information:

(A) Parties to the Appeal

Plaintiff:

Lyme Land Conservation Trust Inc.
P.O. Box 1002,
Lyme, CT 06371

Plaintiffs' Counsel:

Tracy Collins, Esq.
Waller, Smith & Palmer P.C.
52 Eugene O'Neill Drive
New London, CT 06320
(860) 442-0367
(860) 447-9915 Fax
tmcollins@wallersmithpalmer.com

John F. Pritchard (*pro hac vice*)
Timothy M. Russo (*pro hac vice*)
Pillsbury Winthrop, Shaw, Pittman
1540 Broadway
New York, NY 10036
(212) 858-1000
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- (B) None
- (C) There were exhibits.
- (D) N/A.

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CERTIFICATION

Pursuant to Practice Book § 67-2(h), I hereby certify that: (1) the electronically submitted brief and appendices were emailed on April 13, 2016, to counsel of record listed below; and (2) that the brief and appendices do not contain any names or personally identifiable information that is prohibited from disclosure or that any such information has been redacted.

Pursuant to Practice Book § 67-2(i), I hereby certify that: (1) in compliance with Practice Book § 62-7, a copy of the foregoing brief and appendices were mailed, postage prepaid, to **The Honorable Joseph Q. Koletsky**, and the counsel of record listed below on April 13, 2016; (2) that the brief and appendices are true copies of the brief and appendices filed electronically pursuant to Practice Book § 67-2(g); (3) that the brief and appendices do not contain any names or personally identifiable information that is prohibited from disclosure or that any such information has been redacted; (4) and that the brief complies with all provisions of Practice Book § 67-2(i).

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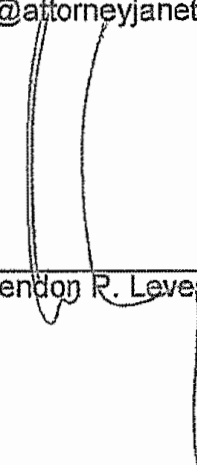
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CERTIFICATION

Pursuant to Practice Book § 67-2(h), I hereby certify that: (1) the electronically submitted brief and appendices were emailed on October 20, 2016, to counsel of record listed below; and (2) that the brief and appendices do not contain any names or personally identifiable information that is prohibited from disclosure or that any such information has been redacted.

Pursuant to Practice Book § 67-2(i), I hereby certify that: (1) in compliance with Practice Book § 62-7, a copy of the foregoing brief and appendices were mailed, postage prepaid, to **The Honorable Joseph Q. Koletsky**, and the counsel of record listed below on October 20, 2016; (2) that the brief and appendices are true copies of the brief and appendices filed electronically pursuant to Practice Book § 67-2(g); (3) that the brief and appendices do not contain any names or personally identifiable information that is prohibited from disclosure or that any such information has been redacted; (4) and that the brief complies with all provisions of Practice Book § 67-2(i).

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